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Senate

EXECUTIVE SESSION

NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

(Continued)

The PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, here we are in the middle of an unprecedented filibuster against the first Hispanic nominee to the Circuit Court of Appeals for the District of Columbia—against a man who has a unanimously well-qualified rating by the ABA, which was the gold standard of the Democrats and something that a lot of confirmed judges did not have; a man who has all the credentials in the world—magna cum laude from Columbia, magna cum laude from the Harvard School of Law, editor in chief of the Law Review, clerked for two Federal judges, one on the Second Circuit Court of Appeals put on the bench by President Carter, a Democrat, and, the other, Supreme Court Justice Anthony Kennedy—lots of experience, worked in the Solicitor General's Office.

We have heard a lot of arguments, and many respected arguments. We have heard that Mr. Estrada has not answered the questions of Senators on that side. Well, he has. He spent a full day when they conducted the hearings. They set the agenda. They asked any questions they wanted to ask. They were in control. They have even said on the floor during this debate that the hearings were conducted fairly by them.

Then, when the election was lost, all of a sudden they now want to ask more questions. And, by the way, they had an opportunity to ask any written questions after the full hearing. Only two Senators asked written questions—Senator DURBIN from Illinois and Senator KENNEDY from Massachusetts. He answered those questions.

The problem here is that he didn't answer the questions the way they wanted him to. He answered them the way he should have. We put those questions and those answers into the RECORD today.

It is unfair, after what this man has gone through—after all the hearings, all the questions, all the time that has elapsed—almost 2 years—that this highly qualified individual is now being filibustered on the floor of the Senate.

If the Democrat Members of the Senate do not like his answers, then they have a remedy; that is, vote against Miguel Estrada. I can live with that. That is their right. If that is what they want to do, that is a proper exercise of their constitutional duty.

But really understand that to constitutionally modify the advice and consent process of the Constitution and now require 60 votes in order to have a Presidential nominee confirmed by the Senate is unprecedented, except in one case, and that was Judge Fortas. President Nixon himself fought against that and argued against that. But it was a bipartisan filibuster, if you have to characterize it.

To simply deny the Senate a vote is unfair. It is unfair to the Senate, it is unfair to the President, it is unfair to the process, and it certainly is unfair to this Hispanic American, who, by the way, has risen to be one of the best appellate lawyers in the country even though he has the speech impediment disability. Think of it. He has a speech impediment, and yet he has argued 15 cases before the U.S. Supreme Court, winning 10 of them. I can't name many candidates for judicial office in my 27 years in the Senate who had even come close to that record.

I think this is an abuse of the process. It is an abuse of what has really been precedent through all of these years. It is an abuse by the minority. It is nothing more than what some would call the tyranny of the minority against the first Hispanic nominee in the history of this country to the Circuit Court of Appeals for the District of Columbia.

Mr. SANTORUM. Mr. President, will the Senator yield for a question?

Mr. HATCH. I am happy to yield for a question without losing my right to the floor.

Mr. SANTORUM. Mr. President, one of the issues I have heard raised by the other side is that the nominee has not had judicial experience. In fact, the chairman of the House Democratic Hispanic Caucus wrote a letter to the Judiciary Committee, I understand.

I want to quote from Congressman BOB MENENDEZ, who says:

> If the Senator—
>
> Referring to Senator HATCH—
>
> chooses to ignore one of the many reasons we oppose the Estrada nomination, simply put, he has no judicial expedience.

Now, I find this to be a particularly amazing argument coming from someone who is Hispanic, given the paucity of Hispanics on the bench right now, that we are setting this bar before a group that only has about 3-percent representation on the bench right now but comprises 14 percent of the population of this country, that someone who heads the Democratic Hispanic Caucus will put this bar to Hispanic nominees, that they do not have judicial experience.

Has such a bar ever been placed before that you are aware of for nominees?

Mr. HATCH. First, let's understand the Democratic Hispanic Caucus. They did not allow the Republican Hispanics, the three of them in the House of Representatives, to become part of that. So it is clearly a very partisan group. We have a couple of our colleagues in the Chamber from the House of Representatives watching this very carefully, people who have spoken out for the Hispanic community.

Secondly, by saying that he does not have any judicial experience, therefore, he doesn't qualify to be on the Federal

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

bench, what does that say to every member of the Hispanic Bar Association, none of whom, really, except current judges, have any judicial experience in the sense of having been judges. It means he is saying they cannot be judges either.

What kind of a representative of the Hispanic community would make that kind of a statement, if he really wants to help the Hispanic community? Or is that representative just making partisan remarks, which is what I believe he was doing?

The fact is, we have confirmed 26 Clinton judges who have not had judicial experience—26. That is the phoniest argument I have heard yet, and it is a disgrace to argue it in the sense that Hispanics cannot serve on the judiciary if they have not had judicial experience.

Now, let's think of one other thing. Miguel Estrada was a law clerk to Amalya Kearse, a Carter appointee, on the Second Circuit Court of Appeals. That is judicial experience. He helped write some of the opinions that she made. He was a law clerk to Anthony Kennedy on the Supreme Court of the United States of America. That is a lot more than a lot of others, than any of the 26 Clinton appointees had.

So to say that he has not had judicial expedience—but even if you do not count that as judicial experience, this is a man with every qualification, and they have not laid a glove on him. It is really very unfair, and I think we ought to all stop and think about that.

But I would also like to point out—I do not mean to take too long on this question, but I also would like to point out 108 men and women have served on the Supreme Court, and of the 108, 43 had no judicial experience at all. In the Court's history, 8 of the 16 Chief Justices—most recently, Chief Justice Earl Warren—had no prior judicial experience when appointed to the Supreme Court. Of those Justices appointed in the last 50 years, Justices William Rehnquist, Lewis Powell, Jr., Abe Fortas, Arthur Goldberg, and Bryon White had no prior judicial experience when they were appointed to the U.S. Supreme Court.

I know that is the phoniest argument I have heard yet.

Mr. NICKLES. Will the Senator yield?

Mr. HATCH. If I could first yield to the Senator from Kansas.

Mr. BROWNBACK. If you would yield for a question, I had the pleasure of serving on the Judiciary Committee last session of Congress, although we didn't get a lot of judges on through and cleared, and we are trying to clear those now.

But Miguel Estrada was up last session of Congress. One of the charges against him, by a number of people, was that he is an ideologue, he is a right-wing ideologue.

I would ask the question: It is my understanding Mr. Estrada worked with the Clinton administration for the Janet Reno Justice Department. And it would seem highly unlikely to me that a right-wing ideologue would be hired to work for the Clinton Justice Department. But that is the charge that is being brought against him; is that correct?

Mr. HATCH. The nominee, Miguel Estrada, worked for the Clinton administration. He worked in the Solicitor General's Office of the Justice Department in the Clinton administration. And it is highly unlikely that he would have received the support of Seth Waxman and other prominent Democrats if he were a right-wing ideologue. In fact, Seth Waxman says he is not.

Now, Seth Waxman was a Democrat Solicitor General under Clinton. By the way, the seven living former Solicitors General are backing Miguel Estrada, four of whom are Democrats: Seth Waxman, Drew Days, Walter Dellinger, and Archibald Cox.

Mr. BROWNBACK. I thank my colleague for responding to the question. I find it so odd that would be a charge brought against him. He worked for the Clinton administration, the Janet Reno Justice Department.

Mr. REID. Mr. President, I object. I object to the statement. I object. I object.

Mr. HATCH. I ask for the regular order.

The PRESIDENT pro tempore. Regular order. Regular order. The Senator from Utah has the floor. Members asking questions will address the Chair.

Mr. NICKLES. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. I will, without losing my right to the floor.

Mr. NICKLES. When the Senator was talking about judicial experience or legal experience, correct me if I am wrong, but didn't Miguel Estrada argue 15 cases before the Supreme Court? And doesn't that mean he has a lot of experience, legal experience, and that he must be held in highest esteem to be able to argue 15 cases before the Supreme Court?

Mr. HATCH. It is a good question. Miguel Estrada is a full partner in one of the great law firms of the country, Gibson, Dunn & Crutcher, at his young age. He has argued 15 cases before the Supreme Court, winning 10 of them. That is a pretty good record. By the way, I mentioned he did that suffering a disability.

This man has arisen above language barriers, immigration barriers, educational barriers, legal barriers, to attain to the position he has. He has lived a Hispanic dream life. And here he is being held up on the floor of the Senate—without one good reason.

Mr. GREGG. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. I will, without losing my right to the floor.

Mr. GREGG. Mr. President, I ask the Senator from Utah, didn't Mr. Estrada come to the United States without speaking any English when he was a teenager?

Mr. HATCH. He came to the United States at age 17, if I recall it correctly. He had a very limited knowledge of English, taught himself English, went on to Columbia University, graduating magna cum laude, and from there went on to Harvard University, where he also graduated magna cum laude and also was editor in chief of the Harvard Law Review.

Yes, he overcame a lot of problems. As I say, that is in addition to his disability that has not stopped him from reaching the heights of the legal profession.

Mr. GREGG. Will the Senator yield for a further question?

Mr. HATCH. I yield further to the distinguished Senator from New Hampshire.

Mr. GREGG. That is one incredible record. Is not Columbia University a university in New York City? I believe the Senator from New York was on the floor. In fact, it is one of the finest universities in the United States. And an extremely competitive person came over when he was 17. He must have been admitted when he was 19 or 20. He matriculated there, and graduated magna cum laude; is that correct? He must be an extremely bright individual. And then he went on and graduated from Harvard. And he was editor of the Harvard Law Review, one of the finest law reviews in the country.

He must be an incredibly bright individual; is he not?

Mr. HATCH. The Senator is absolutely correct. Miguel Estrada is a brilliant individual.

Mr. GREGG. If the Senator will yield for a further question, are either of those universities considered conservative schools?

Mr. HATCH. I would never want to characterize either as being liberal or conservative. But I think people who know can very easily characterize them.

Mr. CHAMBLISS. Mr. President, will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. CHAMBLISS. As a new member of your committee, I do not have the pleasure of knowing Mr. Estrada as you do, but expanding on what the Senator from New Hampshire just said, I believe that Mr. Estrada has established himself in the legal profession in a very unqualified manner, that he is just extremely qualified, is an excellent lawyer. And I wish you would give us the benefit of some of his legal work and his legal background.

Mr. HATCH. Well, keep in mind, Miguel Estrada is a partner in the very prestigious law firm of Gibson, Dunn & Crutcher. But he got there by clerking—to get a clerk's position in a Federal court is a very high honor. To be editor of the Law Review at Harvard is one of the highest honors any law school can offer. But then he becomes a clerk to Amalya Kearse on the Second

Circuit Court of Appeals, which is one of the great circuits in this country. She is a great judge. And then he later became a clerk to Justice Anthony Kennedy on the Supreme Court, and is still one of his best friends and advisers, and vice versa. And, of course, he has become a partner in one of the great law firms in this society.

He has tried all kinds of cases, 15 before the Supreme Court, winning 10.

When the ABA, which my friends on the other side have called the gold standard, did their thorough investigation of Miguel Estrada, they came to the conclusion he is unanimously well qualified, the highest rating the American Bar Association can give. That is in spite of all of the impediments this young man has had coming up through the ranks from Honduras to this country to college to law school to these various positions. By the way, I didn't mention he worked in the Solicitor General's Office giving very effective opinions for both the first Bush administration and the Clinton administration.

Mr. CHAMBLISS. If the Senator will continue to yield, is it not true he did serve as a Solicitor General in the Clinton administration for several years, advising that administration the same as Republican administrations?

Mr. HATCH. He did. He served as an assistant to the Solicitor General and came away with virtual raves for his work. Only one person has criticized him, and we have more than made it clear that that criticism is blown away by that person's, Professor Paul Bender from Arizona State University, raving reviews of his work when he was actually there. I think we would rely on those raving reviews rather than the political statement that was made later.

Mr. CHAMBLISS. I thank the Senator.

Mr. ALLARD. Mr. President, will the Senator yield?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. ALLARD. I have heard some on the floor try and imply that somehow Mr. Estrada has a hot temper, a short fuse. First, I would have to say that seems inconsistent with the many letters from those who know him. That includes such people as his former colleagues in the Solicitor General's Office, Ron Klain and Seth Waxman, who all praised his personal demeanor. But beyond that, is the Senator as troubled as I am by the use of these code words that perpetuate stereotypes about Hispanics and makes you wonder if we are debating Ricky Ricardo or Miguel Estrada? I see high praise in a New York Post article that describes him as a great American success story.

I wonder if the Senator from Utah would respond to that question.

Mr. HATCH. If there is a greater success story, I would like to meet the person. If you were to meet Miguel Estrada, you would say this is truly a wonderful man and a great lawyer. Fourteen of his colleagues, I believe, at the Solicitor General's Office and throughout the Government, including Seth Waxman, who was Solicitor General in the Clinton administration, and I might add Ron Klain, who worked on the Judiciary Committee, was Al Gore's most faithful legal advisor, went everywhere with Al Gore, totally devoted to him, have said he would make a wonderful judge. He has the temperament and ability to do so.

Only one person has issued a negative opinion, and that was Professor Paul Bender. If you read the record—I don't want to go through it again—I think that opinion should be totally discarded when you look at the facts.

Mr. SMITH. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. I am happy to, without losing my right to the floor.

Mr. SMITH. I wonder if the Senator from Utah could tell us about the internal memoranda our colleagues on the other side are seeking. It is my understanding Mr. Estrada wrote these memoranda when he served as Assistant Attorney General. It is also my understanding he has said he has no problem with their release. But it is my further understanding that every living Solicitor General, Republican and Democrat, has advised against their release; is that correct?

Mr. HATCH. That is true. All seven living Solicitor Generals—four Democrats, three Republicans—oppose this request. The Democrats are Archibald Cox, Seth Waxman, Drew Days, and Walter Dellinger. The Republicans are Charles Fried, Robert Bork, and Ken Starr. I might add that both the Washington Post and the Wall Street Journal oppose the demand for these memos.

There is good reason for that. When the Democrats requested the memos, they requested his recommendations on appeals, his recommendations on certiorari petitions, his recommendations on amicus curiae briefs. Never in the history of the Justice Department have those type of materials that are privileged, confidential work product materials been given to this branch of Government or any other branch.

The Democrats have said there are four or five cases where the Department of Justice materials have been given. They have scoured the Justice Department; the administration and the current Justice Department have scoured those records, and they have found in all but Bob Bork there was no evidence anybody had given up those records to anybody here. If they have records, they must have been leaked by friends of the Democrats in the administration. They were not provided by the Justice Department.

In the case of Bob Bork, they did give some special request memoranda, because it was up to the Supreme Court, affecting the area involving his decisions with regard to Archibald Cox. Certainly not the recommendations in writing, the confidential recommendations in writing of appeals, amicus curiae and certiorari petitions.

Mr. SMITH. A further question, Mr. President, isn't it true, though, he has said he has no problem with their release?

Mr. HATCH. He has said that. But the Justice Department has tremendous problems. They not only consider it a matter of principle, they consider it a matter of absolute principle.

Mr. SMITH. And they are not his to release?

Mr. HATCH. That is right. They are not his to release even if he wanted to.

Mr. SMITH. I believe the Washington Post and others have described this.

Mr. REID. Mr. President, I object. This is not a time for making statements.

The PRESIDENT pro tempore. The Senator from Utah has the floor.

Mr. HATCH. Let him ask the question.

The PRESIDENT pro tempore. Senators will address the Chair and try to ask a question of the Senator from Utah. The Senator from Oregon had his question answered. He did not ask for a chance to have another question. The Senator from Utah may respond.

Mr. SMITH. If I could rephrase my question, hasn't the Washington Post opined this is out of bounds, not fair game, a fishing expedition?

Mr. HATCH. No question about it. It is a fishing expedition. And why is it? We received the last letter to produce these materials after they had been refused, in eloquent, very deliberate and straightforward letters from the White House; we received the last request, I think, the day before the hearing on Miguel Estrada. Frankly, it is clearly a fishing expedition, trying to find something because they don't have anything on this man. They just don't like the fact he is a conservative Republican Hispanic.

Mr. SMITH. I thank the Senator from Utah.

The PRESIDENT pro tempore. The Senator from Virginia.

Mr. WARNER. Mr. President, I ask the distinguished Senator from Utah if he will yield for a question.

Mr. HATCH. Without yielding my right to the floor.

Mr. WARNER. Mr. President, colleagues, this nomination for this Senator is a personal matter, for the reason that I was privileged to——

Mr. REID. Mr. President, I have the utmost respect for my friend from Virginia. He is making a statement, not asking questions.

Mr. HATCH. Mr. President, I think we ought to give the——

The PRESIDENT pro tempore. The Senator from Utah has the floor. The Chair was trying to obtain a ruling from the Parliamentarian and did not hear the question. Will the Senator from Virginia restate his question? The Senator from Utah, let the Senator from Virginia restate his question.

Mr. HATCH. I think he should be allowed to ask his question.

Mr. WARNER. I will phrase it as a question. I just wanted to lay a predicate, a foundation for the purpose of the question. I said this was a personal matter. I assert that because I had the privilege of introducing this distinguished nominee——

Mr. REID. Mr. President, I object to the form of the statement by my friend from Virginia. He has the right to ask a question. He has no right to make a statement.

The PRESIDENT pro tempore. The Senator has a right to have a preamble to a question before he asks it. He has not asked a question. The Senator from Virginia will continue.

Mr. WARNER. I was about to say, I had the privilege of introducing him and I did so for several reasons. One, I carefully examined the distinguished dossier of this lawyer. But am I not correct this is a nomination to the Federal Circuit Court of Appeals for the District of Columbia?

Mr. HATCH. You are correct.

Mr. WARNER. Mr. President, I was privileged to be a law clerk.

The PRESIDENT pro tempore. The Senator will ask another question, please.

Mr. WARNER. Yes, Mr. President. I shall pose it in the form of a question. I had the privilege of being a law clerk on the same circuit court of appeals many years ago. I ask my distinguished colleague, when a United States Senator goes before the Judiciary Committee for the purpose of introducing a nominee, does not that Senator place his or her credibility before that committee in making those statements?

Mr. HATCH. As you know, Senator, you did that. We respect your credibility. I think both sides respect your credibility, as we should. You did make a very formal and important statement on behalf of Miguel Estrada.

The PRESIDENT pro tempore. The Senators cannot have a dialog on the floor under the guise of asking questions.

Mr. WARNER. I thank the Chair.

Mr. BOND. Will the Senator yield?

Mr. HATCH. Mr. President, I am happy to yield for a question without losing my right to the floor.

Mr. BOND. Mr. President, I ask the Senator from Utah, who has experience with the entire judicial process. As one who has served as a law clerk, I ask is it not commonplace for law clerks, for assistants, to write memoranda that do not necessarily reflect their views, but are designed to explain the rulings made by the judge or other lawyer or solicitor who may serve?

Mr. HATCH. Without question, that is so.

Mr. BOND. Is it the experience and knowledge of the distinguished chairman of the committee that the legal scholarship may be shown by these rulings, by these drafts, but they do not in any way reflect, necessarily, the views of the clerk or the assistant?

Mr. HATCH. The Senator is correct once again.

Mr. BOND. Is it not true, then, that perhaps the best judge of the legal capabilities of a law clerk, Assistant Solicitor General, or assistant attorney would be those for whom that clerk or assistant worked?

Mr. HATCH. That is correct. And three Democrat Solicitors General reviewed these materials and had access to them, and they have nothing but praise for the work of Mr. Estrada.

Mr. BOND. Mr. President, there is something very troubling that I wish to pursue and that is whether a nominee——

Mr. REID. Mr. President, I object.

The PRESIDENT pro tempore. The Senator may not address a question to the Chair.

Mr. BOND. Mr. President, I will ask the question of the Senator from Utah, who happens to be in the line of sight of the Chair, both of whom I respect. I will focus the question to the Senator from Utah. Do you share the concern that should a clerk, assistant counsel to a U.S. Senator, or perhaps a Member of the other body, be nominated for a judicial position, under this principle enunciated by our friends on the other side of the aisle the nominee would have to turn over all of the papers prepared for that Senator, or that House Member, or the committee for which that nominee may have worked?

Mr. HATCH. Well, I have to say that the Solicitor General's Office is one of the most important offices in the country. This is the advocate for our country. These opinions are extremely important. They want the best opinion they can get from the people who serve there and write the opinions, as Miguel Estrada did. By necessity, they have to be confidential and privileged because, otherwise, the Solicitor General's Office would not function as well on behalf of the American citizens.

So in all honesty, if our friends on the other side were to prevail in forcing any administration, or if we would do so later because they do so now, then that means no privileges will be respected in the executive branch of the Government. Now, if we start doing that, I have to ask you, where does it end? Does it end where the opinions our staffs give us at our request have to be given up if they are nominated?

Mr. BOND. That is the question I am asking, the same principle. Would the same principle apply, that someone who had served you or me as a counsel, if nominated, would have to provide all of the memoranda, drafts, and opinions prepared, or memoranda prepared for you or me, were they to be nominated?

Mr. HATCH. Well, let's just be honest about it. Considering a nomination for a judgeship like it is being done here would become just a methodology for anybody. If you didn't get the papers you wanted from some source or other in the Federal Government—and it might even include the Senate—then you can hold up judges just as they are doing here. Look, that would——

Mr. BOND. Mr. Chairman, would you ever——

The PRESIDENT pro tempore. Does the Senator from Missouri seek to have the question answered?

Mr. BOND. I simply ask the question, as a Senator, would you ever consent to have confidential memoranda prepared for you by a lawyer who happened to be in your employ, who is subsequently nominated for a judicial position—would you ever consent to a wholesale turnover of all that work product prepared for you as a U.S. Senator?

Mr. HATCH. Put it this way. If one of my excellent staff people was nominated to a Federal judgeship and somebody tried to pull that one over on me, I would raise such cane that it would blow the lid off this building, and I think anybody else would, too. You can imagine how the Solicitor General's Office must feel for this type of an inappropriate request for a confidential, privileged matter that they have to keep that way if they want to not chill honest discourse within the Solicitor General's Office. This is absurd. That is what they are pinning their hat on here.

Let me tell you, if that is what it comes down to, it is going to be hard to get any judge through that one or the other side has a difference with in the slightest degree. There is no reason to disagree with Mr. Estrada. I have not heard one legitimate, good reason—not one yet.

Mr. ENSIGN. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. ENSIGN. Mr. President, I have a preamble to my question. I heard my colleague refer to the opposition to Miguel Estrada as imposing an intellectual glass ceiling for Hispanics who are not liberals. We hear a lot about diversity on the courts. Yet some people seem intent on blocking this nominee for having a diversity of opinion as compared to what those on the left want. Don't you agree that an important kind of diversity is the diversity of ideas, and isn't that exactly what the opponents of Mr. Estrada and his confirmation are trying to prevent—diverse ideas from a Hispanic nominee?

Mr. HATCH. It certainly looks that way to me. One argument is that he is not Hispanic enough. That is ridiculous. Others have said he hasn't had any judicial experience. I think we have more than blown that away. I don't think any reasonable person would make that argument. Yet I have heard argument after argument that he doesn't have any judicial experience.

I agree that some special interest groups, and others that have been criticizing Mr. Estrada, think all minorities have to think alike. If you are a minority, if you don't toe the liberal line, they don't want anything to do with you. That is the problem here.

I don't think my colleagues are against Mr. Estrada because he is Hispanic. No, it is because he is a Hispanic

Republican, and they think conservative, who may not agree with some of their more liberal ideas.

It seems to me that this is fundamentally un-American. I don't think there is anyplace in our system for this type of thinking. Miguel Estrada reached his views by examining all the facts and coming to his conclusions, and to suggest that he or anyone else has to arrive at a certain political bent—and one only—is simply not fair. He is not being treated fairly here. I don't think anybody who watches this or looks at it, or understands it would think he is being treated fairly. He is just not.

The PRESIDENT pro tempore. Does the Senator from Utah yield the floor?

Mr. HATCH. Yes.

The PRESIDENT pro tempore. The majority leader is recognized.

Mr. FRIST. Mr. President, we opened the Senate a little over 12 hours ago. At the outset, I mentioned that I hoped we would have the opportunity to have a good, robust discussion over the day, and that after that discussion we would have an opportunity to vote up or down on this outstanding, well-qualified nominee.

I am delighted, as I look around the Chamber, to see at practically every Republican desk someone behind it ready to vote. The discussion has been good today. It has been complete today. And as my colleagues on the other side of the aisle mentioned this morning, everything, in essence, has been said about this well-qualified nominee. If that is the case and we, indeed, have given sufficient time: It has been 5 days, since last Wednesday; we have spent 5 days on this nominee talking about his qualifications, which has been fascinating over the course of today. Each time I listened to one of our Senators, I learned something. Every time, I got more and more excited about this particular nominee.

We have attempted to have the up-or-down vote, in fact, on three previous occasions. We have had a unanimous consent request, and at this juncture I will again try to reach an agreement with my Democratic colleagues.

I therefore ask unanimous consent that there be an additional—an additional—6 hours for debate on the Estrada nomination; provided, further, that the time be equally divided between the chairman and the ranking member, or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Reserving the right to object, for the reasons outlined since last Wednesday by the minority, an objection is raised.

The PRESIDENT pro tempore. Objection is heard.

The majority leader.

Mr. FRIST. Mr. President, I therefore modify my request to ask that the vote occur no later than Friday of this week.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Objection.

The PRESIDENT pro tempore. Objection is heard.

The majority leader.

Mr. FRIST. Mr. President, as you can see, the Chamber, at least on this side of the aisle, is full and ready to vote. Therefore, I modify the request to ask that the vote occur no later than 1 week from this Friday, 7 days from now.

Mr. REID. Reserving the right to object.

The PRESIDENT pro tempore. The Senator from Nevada.

Mr. REID. Mr. President, as has been outlined in detail on many occasions here, if the nominee is willing to submit his——

Mr. GREGG. Regular order, Mr. President.

Mr. REID. Objection.

The PRESIDENT pro tempore. Objection is heard.

The majority leader.

Mr. FRIST. Mr. President, because I think we have had adequate debate, and discussion—Miguel Estrada is a well-qualified nominee, and there is a shortage of judges in the United States of America, a critical shortage—I modify my request to ask that the vote occur no later than 2 weeks from this Friday.

The PRESIDENT pro tempore. Is there objection?

Mr. REID. Mr. President, we have approved 103 judges——

Mr. BROWNBACK. Regular order.

Mr. REID. Up to this point. I object.

The PRESIDENT pro tempore. Objection is heard.

Mr. FRIST. I yield the floor.

The PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, as you can see, there is no fairness in this process. This is the first filibuster for a circuit court of appeals nominee in the history of this country. The majority leader has been very fair in granting extra time. The other side said they have debated it long enough. We have always voted up or down at this juncture, and the minority is unfairly filibustering this nominee for the first time in history, this Hispanic-American nominee who has climbed every step of the way into the American dream. They are taking an attitude and a position that takes away from that American dream.

Mr. DURBIN. Will the Senator yield for a question?

Mr. ALLEN. Mr. President, will the Senator——

The PRESIDENT pro tempore. The Senator from Utah has the floor. Who seeks recognition?

The Senator from Virginia.

Mr. ALLEN. Mr. President, I ask if the Senator from Utah will yield for a question.

Mr. HATCH. Without losing my right to the floor.

Mr. ALLEN. I ask the Senator from Utah if it is true that right now there is nothing to prevent us from taking a stand and voting up or down on Miguel Estrada other than the obstructionist delays being perpetuated by the other side.

Mr. HATCH. Mr. President, I say to the Senator, that is absolutely true.

Mr. ALLEN. I ask, Mr. President, a further question. Is it not true that on the DC Court of Appeals there are 12 judges allocated to that court?

Mr. HATCH. That is correct.

Mr. ALLEN. Is it not true that there are four vacancies on that court, which, calculating, means a third are unfilled?

Mr. HATCH. This is correct.

Mr. ALLEN. Does the Senator believe justice is being delayed and, thus, denied on the DC Court of Appeals due to a third of this court being vacant?

Mr. HATCH. I agree, justice delayed is justice denied, and this is a very important court. The problem is our friends on the other side just do not want a conservative Hispanic appointed by a Republican President on that court.

Mr. ALLEN. I ask, Mr. President, a further question, if the Senator will yield.

Mr. HATCH. For a question.

Mr. ALLEN. Does the Senator from Utah recognize the people of America believe there are many important issues facing this country—terrorism, war possibly in Iraq, moving forward with creating more jobs and improving health care, education—and by the Democratic Party's obstruction here of actually voting one way or the other on Miguel Estrada, they are delaying this body from acting on these very important matters for security and job opportunities for Americans?

Mr. HATCH. I agree 100 percent with the distinguished Senator from Virginia.

Mr. ALLEN. I thank the Senator.

Several Senators addressed the Chair.

Mr. DURBIN. Will the Senator yield for a question?

The PRESIDENT pro tempore. Who seeks recognition?

Mrs. HUTCHISON. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. I will be happy to, without losing my right to the floor.

The PRESIDENT pro tempore. The Senator from Texas.

Mrs. HUTCHISON. Will the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor, I will be happy to yield.

Mrs. HUTCHISON. Mr. President, I ask the Senator from Utah, how many votes does it say in the Constitution are required to confirm a judge in the Senate?

Mr. HATCH. A simple majority. It says we have the power of advising and consenting. It does not say we have the power to advise and filibuster or obstruct, which is what is going on here.

Mrs. HUTCHISON. That is my question. If the Constitution says 51 votes,

or a simple majority, I am asking if it would be an effort to go around the Constitution to filibuster a Federal judge. Is it even really seemly to filibuster a Federal judge nominee when the Constitution is very clear on this issue? Is it setting a new standard with Miguel Estrada that we are going to all of a sudden have the Constitution averted to start requiring 60 votes out of 100 to confirm a Federal judge, a nominee, which is the President's absolute right to make, his right and responsibility, and he has nominated these qualified judges?

Mr. HATCH. There is no question. I agree with the distinguished Senator from Texas. That is what is going on here, and they are depriving this qualified Hispanic of his right to sit on this bench without any real justification. That is what bothers me. It is a double standard. It is clearly a double standard, and it is a double standard that is unseemly. I think the Senator put it exactly right.

Two of our Hispanic Republican colleagues in the House have come over here to show their support for Mr. Estrada, Mr. MARIO DIAZ-BALART and Mr. DEVIN NUNES.

Mrs. HUTCHISON. I thank the Chair. I yield the floor.

Several Senators addressed the Chair.

Mr. LEAHY. Will the Senator yield for a question?

The PRESIDENT pro tempore. Who seeks recognition?

Several Senators addressed the Chair.

The PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Will the Senator from Utah yield for a question?

Mr. HATCH. I will be happy to yield, without losing my right to the floor.

Mr. DURBIN. I would like to ask the Senator the following question: Is it not true that Richard Paez, a Hispanic American, nominated to be a U.S. Circuit Judge for the Ninth Circuit, at a time when the Senator from Utah was chairman of the Senate Judiciary Committee, waited over 1,500 days before that committee was forced to finally face a Senate record vote, a cloture vote on March 8, 2000, before his nomination was approved by the Senate?

Mr. HATCH. It was a disgrace.

Mr. DURBIN. I am sorry. I gave the wrong date on that. March 8, 2002.

Mr. HATCH. It was a disgrace that Judge Paez had to wait that long, but Judge Paez had an up-or-down vote on this floor allowed by my colleagues at my request. There was no formal filibuster at the time. Nobody said there was going to be a filibuster. We know we have had some cloture votes in the past, but they have been for votes of convenience or the majority leader has called them for some reason or another but not because there was a filibuster.

The important thing is—and, look, I think it is time for your side to understand it. The important thing is here was a judge that, yes, I do not think was treated fairly, but in the end he had a vote. In the end he sits on the Ninth Circuit Court of Appeals even though our side, almost to a person, in fact to a person, disagreed with that nomination. But we gave him a vote.

Let me tell you something—

The PRESIDENT pro tempore. The Senator will address the Chair, not the Senator.

Mr. HATCH. Let me address the Chair then in answering this question. Miguel Estrada, without one thing against him—and by the way, Judge Paez had plenty of things against him that indicated he was not only an activist judge but ruled without regard to the law. There were some legitimate concerns on our side, even though I believed he should have a vote and he ultimately did, unlike Miguel Estrada.

Let me tell you something, I have not seen one legitimate, substantive reason to not give Miguel Estrada the same privilege that, yes, it took time to do and I had to fight it through and there were all kinds of problems; some were very justified problems——

Mr. DURBIN. Will the Senator yield for another question?

Mr. HATCH. It is time to give Miguel Estrada the same privilege that we gave to Judge Paez.

Mr. DURBIN. Will the Senator yield for a further question?

Mr. HATCH. I will be happy to yield without losing my right to the floor.

Mr. DURBIN. Would the Senator be kind enough to explain that when he was chairman of the Senate Judiciary Committee and this Hispanic nominee Richard Paez was held up for over 1,500 days before his nomination was brought to the floor, it was necessary to file a cloture motion to close debate to bring his name for a vote before the Senate?

Mr. HATCH. It was not necessary. It was not necessary because I was fighting to have that happen and it did in fact happen, unlike what is happening today.

Let me make a suggestion to my colleagues on the other side. I am willing to have one cloture vote, but then let's vote up or down on Estrada. And if you win, I will live with that. If you can destroy this man's career so that he cannot be a Federal circuit court of appeals judge, I will live with that. You have a right to vote against him. But you do not have a right to filibuster this man, nor should you. It is shameful. And it is shameful to put him through this without one substantive reason to do it other than a phony request for privileged documents that everybody knows is phony.

The PRESIDENT pro tempore. The Senator from Utah has the floor. The Senator from Utah will please restrain from referring to another Senator by ''you.'' The Senator must be referred to as ''the Senator.''

Mr. HATCH. I will be happy to abide by that, and I am happy to be corrected by the Chair. I do get a little excited in this matter, and I apologize to my colleagues on the other side, but I think what has gone on does not deserve much consideration.

Mr. KYL addressed the Chair.

The PRESIDENT pro tempore. The current occupant of the Chair is no model of decorum, but I am trying to establish it.

Mr. HATCH. I figured that the Chair would understand.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. KYL. To the Senator from Utah, I have three questions regarding the Paez nomination which he just referred to. The first is if the Senator from Utah could tell us which party was in control of this body and by whom the cloture petition was filed.

Mr. HATCH. Well, I will be happy to. As I understand it, the Democrats were in control, and they filed the cloture motion—we were in control? OK. We were in control and we filed the cloture motion. I am sorry. I am so tired I cannot think straight.

Mr. KYL. The Senator, of course, makes the point. The cloture motion in the case of Judge Paez was filed by the party in control of this body, by the distinguished majority leader of the Republican Party at that time, TRENT LOTT.

I would also ask this question: Is it not true that the debate for Richard Paez lasted 1 day; that there was no filibuster of his nomination?

Mr. HATCH. Well, that is correct, and I suspect that my colleague and friend from Illinois would not vote for cloture for Mr. Estrada as I did for Judge Paez—as we did for Judge Paez.

Mr. KYL. Mr. President, will the Senator from Utah yield for one final question?

Mr. HATCH. I will be happy to yield, without losing my right to the floor.

Mr. KYL. With respect to the Paez nomination, is it not also true that a majority of the Republicans supported the cloture motion vote so that Judge Paez could get a vote but that many of those very same Senators then voted against him? Having given everyone in this body an opportunity to vote, they exercised their right to vote against him but did not deny the right of all the other Senators to vote for him, and that he was confirmed?

Mr. HATCH. That is correct. I am glad the Senator reminded me of that matter.

Mr. REID. Will my friend from Utah yield for a question?

Mr. HATCH. I would be delighted to yield without losing my right to the floor.

Mr. REID. Is the Senator from Utah aware that earlier this evening we voluntarily gave up the floor, as we knew that you and the majority leader wanted to come and make a statement?

Mr. HATCH. Which we would have done for you.

Mr. REID. I guess the question I am asking is: Who is filibustering this?

Mr. HATCH. I guarantee you it is not us. I guarantee you it is you, and if you deny it I would be happy to go to a vote right now.

Mr. REID. I was just wondering. This is taking quite a while.

Mr. HATCH. Let's go to a vote. If you are not filibustering, let's vote.

Mr. REID. Another question, if I could, Mr. President?

Mr. HATCH. Mr. President, I ask for the yeas and nays.

Mr. REID. On what?

Mr. HATCH. On this nomination.

The PRESIDENT pro tempore. Is there a sufficient second?

Mr. REID. It is debatable after that. So what difference does it make?

The PRESIDENT pro tempore. No, it is not debatable.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. There is a sufficient second.

This is ordering the yeas and nays on this nomination.

Several Senators addressed the Chair.

The PRESIDENT pro tempore. It is improper to ask for the yeas and nays.

There is a sufficient second.

The Senator from Utah.

Mr. HATCH. I will be happy to yield, without losing my right to the floor.

Mr. HARKIN. He loses the right to the floor on the motion.

Mr. HATCH. I will be happy to yield to the distinguished Senator from Nevada for a question, without losing my right to the floor.

The PRESIDENT pro tempore. The Senator from Utah has the floor.

Mr. HARKIN. He lost the right to the floor.

Mr. REID. Is the Senator aware that both Democrats and Republicans have sought cloture in response to debate or objections to judicial nominees since the cloture rule was extended in 1949? Is the Senator aware of that?

Mr. HATCH. I did not hear the question.

Mr. REID. The question is, Are you aware that cloture votes on judicial nominees are well precedented in recent history?

Mr. HATCH. Not for true filibusters. I agree we have had cloture votes but not for true filibusters. It has been because a majority leader wanted to have a cloture vote, not because we were not willing to vote on nominees on either side. Your side was willing to vote and we were willing to vote and even when they had to go to cloture on Paez, the majority of Republicans voted for cloture, and then a number of Republicans voted against. But they did give him an up-or-down vote, even though there was widespread disagreement with Judge Paez.

Mr. REID. Is the Senator——

Mr. HATCH. I voted for him, by the way.

Mr. REID. Is the Senator aware that based on cloture votes, there have been——

The PRESIDENT pro tempore. Is the Senator asking the Senator from Utah to yield?

Mr. REID. Yes, I ask the Senator if he would yield for a further question?

Mr. HATCH. I yield for a question, without losing my right to the floor.

Mr. REID. Based on cloture votes, are you aware that there have been 17 filibusters on judicial nominees? Are you aware of that?

Mr. HATCH. No way. Nobody has ever called those a filibuster and there has never been a true filibuster against a circuit court of appeals nominee until this one, and your side has announced that this is a filibuster. No one has ever agreed that those others were filibusters. There were cloture votes, no question about it. But no circuit nominee has ever been defeated by denying cloture, none; zero; nada.

Mr. REID. Will the Senator yield for a question?

Mr. HATCH. I would be glad to yield, without losing my right to the floor.

Mr. REID. The Senator is aware and has acknowledged that there have been a number of occasions where cloture had to be invoked on numerous judges, not the least of which were Richard Paez and Marsha Berzon in recent years?

Mr. HATCH. Let me answer that question. There has never been a true filibuster, until this one, against a circuit court of appeals nominee. In recent years, both sides have used cloture on various occasions other than for filibuster purposes, but there has never ever been a true filibuster against a circuit court of appeals nominee until this time. And whenever there has been a cloture vote, the nominee received his or her vote up or down.

Mr. REID. Will the Senator yield?

Mr. HATCH. Which is not being given here and which is being denied here by the minority.

Mr. REID. Will the Senator yield for one final question?

Mr. HATCH. Without losing my right to the floor.

Mr. REID. I wish the Senator would explain to me what a filibuster is. What is a true filibuster?

Mr. HATCH. When there is an attempt to try and stop debate, when there is an attempt to try to defeat a candidate. And in every case we have had a vote up and down and the judge has been approved.

Mr. REID. But the Senator would acknowledge it took cloture to have that occur?

Mr. HATCH. No. No, I would not.

Technically, yes, but not because there was a filibuster. And the Senator knows that.

In recent years we have used cloture motions for almost everything. But the Senator is talking to the Senator from Utah who knows what a real filibuster is, and there has never been a true filibuster until today, until this filibuster.

Mr. HARKIN. Will the Senator yield?

Mr. HATCH. I am happy to yield to my colleague without losing my right to the floor.

Mr. HARKIN. Mr. President, I ask my friend from Utah, please explain why the difference in substance rather than form of what happened 2 years ago, now almost 2½ years ago, in the year 2000. The Judiciary Committee held a hearing in May 2000 on the nomination of one Bonnie Campbell, former attorney general of the State of Iowa to be a justice for the Eighth Circuit—and then, nothing.

Then the Republican leadership would not bring her name on the floor for a vote. Seven times that fall I came to the floor, I say to the Senator, to ask that her name be brought up to vote, up or down or that at least she get a vote in committee. The Republican leadership would not bring her name up for a vote. I ask the Senator from Utah, other than form, what is the difference in substance between that and today?

Mr. HATCH. She was never brought to the floor. I acknowledge that. She was not. She was 1 of 41 who were left hanging at the end of that administration in contrast to the 54 left hanging when the Democrats lost the Presidency and a Republican was President. In other words, 13 less. And 9 of the 41 were put up so late there was no way anyone could get through, so we are down to 32. And with 32 we had other problems. We can have all the statistics, but we ''bettered'' the Democrats in every case.

She was not brought up so there was, naturally, no filibuster.

The PRESIDENT pro tempore. The Senator from Maine.

Ms. COLLINS. Mr. President, would the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Ms. COLLINS. Would the Senator from Utah be so kind as to explain the ABA rating system under which it is my understanding that Mr. Estrada received the highest possible rating? Would the Senator further explain whether there was a split rating, or whether it was unanimous, and what the general concession of those on the other side of the aisle has been toward ABA ratings in the past?

Mr. HATCH. I thank the Senator for her very erudite question. Let me start with the last part of that.

When the Democrats were in control of the Judiciary Committee and they had a Democrat President, they said the ABA was the gold standard. I cannot remember when a nominee who had a ''unanimously well-qualified'' rating, the highest rating the American Bar Association gives, had any difficulty like this. They went through. It was that simple. There is a double standard here against this Hispanic gentleman.

I have to admit I was not very pleased with the ABA during many of the years when they made ratings that

were split all the time because of partisanship. They have cleaned that up. The ABA is doing a decent job and has done a pretty decent job in the last 4 or 5 years.

What happens is when a President decides to nominate somebody, the ABA then conducts its own investigation. They send top examiners—lawyers, if you will—into the area from where this individual nominee is nominated. They do a complete review with the top, most ethical, highest rated lawyers in that area, and others, and then they come and meet in what is called a standing committee and then they determine what kind of a rating to give. And the ratings, generally, are ''not qualified,'' ''qualified,'' or ''well-qualified.'' Sometimes those ratings have a split rating where some will be well qualified in part and qualified in part. We have even seen some ratings, well-qualified and not qualified.

In this particular case with this Hispanic nominee, Miguel Estrada, he received the highest possible unanimously qualified rating of the American Bar Association.

Just last year, two of the Senators—the Senator from New York, Mr. SCHUMER, and the Senator from Vermont, Mr. LEAHY—called the ABA rating the gold standard for reviewing judges. They were not the only ones. Now, all of a sudden, that standard does not seem to be good enough.

Ms. COLLINS. Mr. President, would the Senator from Utah yield for just one more followup question on the ABA?

Mr. HATCH. Without losing my right to the floor.

Ms. COLLINS. Is the Senator from Utah aware of any other case in which a judicial nominee received a highly qualified rating from the ABA and was subject to a filibuster on the Senate floor?

Mr. HATCH. I can't think of one case. In fact, there has never been a true filibuster conducted. In the cases where they have raised the question of cloture votes, cloture votes are called for one reason or another by majority leaders, but in each of those cases, as I recall, the nominees had an up-and-down vote. I would be happy to go to a cloture vote with our friends on the other side if afterwards they allow an up-and-down vote regardless of what happens on the cloture vote—happy to do it.

They do not seem to be inclined to do that. They want to filibuster the first Hispanic nominee to the Circuit Court of Appeals for the District of Columbia, who has a ''unanimously well-qualified'' rating by the American Bar Association, their gold standard, and who has all of these other qualifications that lawyers only dream about. And he has fulfilled the American dream. He is being denied his opportunity to serve by a double standard here that is being applied by my colleagues on the other side.

It is some Members. I know all of them cannot feel that way.

Ms. COLLINS. I thank the Senator from Utah for clarifying this issue for the Senator from Maine.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Will the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. DURBIN. Pursuing the same question, can the Senator ever recall a Hispanic nominee suggested by President Clinton, when he was chairman of the Senate Judiciary Committee, Hispanic nominee for the Federal judiciary who received a well-qualified rating in which the Senator, then-chairman of the Senate Judiciary Committee, refused to even give that nominee a hearing?

Mr. HATCH. Do you have anyone specifically you are referring to.

Mr. DURBIN. Enrique Moreno.

Mr. HATCH. In the case of Enrique Moreno, there was no consultation, a refusal to consult with home State Senators. That is basically something we do not allow in the Judiciary Committee. It is one of the reasons that we will use both sides—if there is not adequate consultation, it is one of the reasons we will use to not bring a nominee up. And I think the distinguished Senator from Illinois should know that. If you do not, be advised, that was the reason Enrique Moreno did not come up.

I even wrote a letter to the then-Chief Counsel of the White House. I think it was Chuck Ruff at the time, bless his memory. I wrote a letter to him saying: You will not consult—they basically admitted that—and they were going to bring this up regardless. It was not adequate or good enough and no chairman, I think, would allow that nominee to come forward without consultation—it is just that simple—Democrat or Republican.

Mr. DURBIN. Will the Senator further yield for a question? If the Senator will further yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. DURBIN. I do not want to bore the membership with another debate about the blue slip policy which the Senator indicated is going to change, but I want to make sure it is clear for the record in this case, we had a Hispanic American nominated for the bench by President Clinton, Enrique Moreno, who received a well-qualified rating from the American Bar Association, and was refused a hearing before the Senate Judiciary Committee when you were chairman because the two Republican Senators from Texas refused to approve the nomination. How is that different from a filibuster, for the fate of Enrique Moreno?

The PRESIDING OFFICER (Mr. ENSIGN). Will the Senator from Illinois address in the third person, not directly.

Mr. DURBIN. The Chair is correct. I ask the Chair to address the Senator from Utah as to how it is any different to have Enrique Moreno, with a well-qualified rating from the American Bar Association, nominated to the Federal judiciary, refused a hearing before then-Chairman Orrin Hatch, because two Republican Senators from Texas refused to approve him, thus, frankly, giving him less consideration than Miguel Estrada who is before us today.

Mr. HATCH. I don't think that is accurate at all. The fact is there was no consultation. I informed the counsel at the White House there was no consultation, and we were not going to bring this nominee up without consultation with both home State Senators. And both home State Senators agreed with that. Frankly, I think any chairman would have handled it exactly the same way. And it is not the same at all.

Miguel Estrada not only had a hearing, but he came through the process. It was a difficult process for him, but he came through it and the Judiciary Committee approved the nomination of Miguel Estrada. Miguel Estrada is now on the floor, so it is completely different from that situation. There was consultation in the case of Miguel Estrada. And, frankly, we are sitting here right now in a filibuster for the first time in history of a circuit court of appeals nominee, without question.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I would like to address a question to the Senator from Utah if he would yield.

Mr. HATCH. Without losing my right to the floor.

Mr. KYL. Mr. President, I ask the Senator from Utah, first of all, if the Senator is aware there are many nominees who, for one reason or another, never got out of the Judiciary Committee? In other words, isn't it correct there are many nominees who, for a variety of reasons, do not make it to the floor of the Senate? Is that correct?

Mr. HATCH. The Senator is correct, in both Democratic control of the committee and Republican control of the committee. There are many reasons. The reason may be because of failure to consult. It may be because of further investigations that have to be conducted. It may be further FBI investigations have to be conducted. It may be because of lack of time. It may be because of holds on the Senate floor, which have been used by both sides through time.

But I can tell you this. There were less holdovers at the end of my tenure as chairman of the committee than there were in 1992, at the end of the Democrats' tenure when there was a Republican President.

Let me add one last thing to that, and that is none of us complained, to my knowledge, about Senator BIDEN as chairman when there were 54 holdovers and 97 vacancies. We had 41 holdovers, and nine of those were put up so late there was no way I could have gotten to them in the remaining few weeks we had. So there were really only 32 holdovers and there were a number of those

for which there were justifiable reasons for not bringing them up.

Mr. KYL. Further on this line of inquiry, if I could ask the Senator from Utah to yield, other than the case of Justice Abe Fortas, does the Senator from Utah know of any situation in which a nominee for the Supreme Court or the circuit court of appeals, for example, got to the floor of the Senate and then was stopped by a filibuster?

Mr. HATCH. There has only been one true filibuster in the history of this country, and that was the Fortas nomination. I have to say even President Nixon was against that filibuster. But it was a bipartisan filibuster of both Democrats and Republicans, unlike what we are faced with today where a minority of Democrats are filibustering against a Hispanic nominee for the Circuit Court of Appeals for the District of Columbia, a double standard.

Mr. KYL. Mr. President, I ask the Senator from Utah to yield for two other questions.

Mr. HATCH. Without losing my right to the floor.

Mr. KYL. This goes back, I would advise the Senator from Utah, to the question of whether or not there has been a full opportunity to discover what this nominee believes, what his background is, whether he is well qualified, whether there has been an opportunity, in other words, to question him and whether he has provided full and complete information. Would the Senator from Utah advise all of us how many hours, if it was hours, this nominee was before the Judiciary Committee and whether he answered all of the questions that were put to him at that hearing?

Mr. HATCH. In an unusual hearing, which was much longer than most circuit court of appeals hearings, from 10 o'clock to 5:30 that day, he was asked question after question. He was asked question after question by Democrats as well as Republicans, but mainly Democrats, to the extent that we have this transcript that is larger than most transcripts we have, other than Supreme Court nominees, where he answered the questions. The problem with the Democrats, as I understand it, is he just didn't answer the questions the way they wanted. But he answered them and he answered them in accordance with the directions of no less than Lloyd Cutler, one of the leading Democrat lawyers in the country.

Mr. KYL. Mr. President, my final question to the Senator from Utah, if he would yield please.

Mr. HATCH. I would be happy to without losing my right to the floor.

Mr. KYL. I think I counted 30 questions that were orally asked during the course of a hearing that, as I understand it, went from 10:06 a.m. to 5:25 p.m. In addition to that, the committee routinely sends a questionnaire to these candidates. That questionnaire was provided to Miguel Estrada, and it was returned. It is some 25 pages in length and is a complete answer, and he does not refuse to answer any of the questions that were posed by the committee. These are the same questions that are asked of every nominee who comes before the committee.

May I also ask the Senator from Utah if the answers to this questionnaire have been printed in the RECORD, and if they have not, if the Senator from Utah would place them in the Record?

Mr. HATCH. They have not been placed in the RECORD. Therefore, I ask unanimous consent the questionnaire and the answers be printed in the RECORD. Anybody who looks at that will realize it is a very intrusive questionnaire.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name: Miguel Angel Estrada Castañeda

2. Address: Residence—Alexandria, Virginia; Office—Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036.

3. Date and place of birth: September 25, 1961, Tegucigalpa, Honduras (became naturalized U.S. Citizen on 2/4/86).

4. *Martial Status* (including maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es). Married to Laury Lea Estrada (nee Gordon), Senior Trial Attorney, U.S. Department of Justice, Narcotic and Dangerous Drugs Section, 1400 New York Avenue, N.W., Washington, D.C. 20005.

5. *Education:* List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted. State University of New York at Old Westbury, May 1979 to June 1980 (no degree) Columbia College, Sept. 1980 to June 1983; A.B. degree granted June 1983 Harvard Law School, Sept. 1983 to June 1986; Juris Doctor Degree granted on June 1986.

6. *Employment Record:* List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment: Gibson, Dunn & Crutcher LLP. Positions: Of Counsel attorney, July 1977–December 1999, and Partner, January 2000-present.

Office of the Solicitor General, United States Department of Justice. Position: Assistant to the Solicitor General, Sept. 1992 to July 1997.

Wachtell, Lipton, Rosen & Katz. Position: Associate, Sept. 1987–February 1988, February 1989–March 1990, and May 1992–September 1992.

United States Attorney's Office, Southern District of New York. Position: Assistant United States Attorney, March 1990 to May 1992.

United States Supreme Court. Position: Clerk to Hon. Anthony M. Kennedy, February 1988 to February 1989.

United States Court of Appeals for the Second Circuit. Position: Clerk to Hon. Amalya L. Kearse, August 1986 to July 1987.

Debevoise & Plimpton. Position: Summer Associate, Summer 1986.

Sullivan & Cromwell. Position: Summer Associate, Summer 1985.

Rogers & Wells. Position: Summer Associate, Summer 1984.

Harvard Law School. Position: Research Assistant to Professor Hal S. Scott, 1985–1986.

Boards:

1. Since June 2000, I have been a trustee of the Supreme Court Historical Society, an organization dedicated to expanding public awareness of the history of the Supreme Court of the United States.

2. Since 1998, I have been a member of the National Board of Directors of the Center for the Community Interest, an organization dedicated to improving the quality of life in public spaces.

7. *Military Service:* Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received. I have never served in the military.

8. *Honors and Awards:* List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee. My college and law degrees were both awarded with high honors. I was elected to Phi Beta Kappa in college.

9. *Bar Associations:* List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups. (a) Members, American Bar Association (1987–1993, 2001-present), (b) Barrister, Edward Bennett Williams White Collar Crime Inn of Court, Washington, D.C. (since 1998), (c) Barrister, Edward Coke Appellate Inn of Court, Washington, D.C. (since 2001), (d) Member, The Barristers, Washington, D.C. (since 1998), (e) Member, The Federalist Society (since 1993).

10. *Other Memberships:* List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong. To my knowledge, no organization of which I am a member is active in lobbying public bodies. In addition to the bar associations listed in response to question 9, I belong the following organizations: (a) Member, Old Town Civic Association, Alexandria, Virginia, (b) Member, Old Town Walled Garden Club, Alexandria, Virginia, (c) Member, The Alexandria Association, Alexandria, Virginia, (d) Member, Smithsonian Associates, Washington, D.C.

11. *Court Admission*. List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

I have been admitted to practice in the courts of the State of New York (since July 1987) and the District of Columbia (since December 1998). There have been no lapses in my admission to those courts. In addition, I am a member in good standing of the bars of the following federal courts:

U.S. Court of Appeals, Second Circuit, 3/25/91; U.S. District Court, Southern District of New York, 5/26/92; U.S. District Court, Eastern District of New York, 5/26/92; U.S. Supreme Court, 7/17/92; U.S. Court of Appeals, Fifth Circuit, 2/17/93; U.S. Court of Appeals, Ninth Circuit, 11/10/97; U.S. District Court, Western District of New York, 1/13/98; U.S. Court of Appeals, Third Circuit, 3/13/98; U.S. Court of Appeals, Fourth Circuit, 3/30/98; U.S. Court of Appeals, Eleventh Circuit, 5/01/98; U.S. Court of Appeals, District of Columbia Circuit, 5/07/98.

12. *Published Writings:* List the title, publisher, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the

Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I have not written books, articles or reports, save for a law review note I authored while I was a student at the Harvard Law School. That Note, The Policies Behind Lending Limits, may be found at 99 Harv. L. Rev. 430 (1985). I was a member of the editorial board of the Harvard Law Review—a student journal—from the Fall of 1984 to the Spring of 1986.

I have occasionally been asked to offer, and have given, comments on drafts of scholarly articles. Although I do not regard my role in the writing or publication of those articles as ''editorial,'' the following published articles reflect author acknowledgments of my comments:

Donald J. Boudreaux & A.C. Pritchard, Civil Forfeiture and the War on Drugs: Lessons from Economics and History, 33 San Diego L. Rev. 79 (1996).

Debra Livingston, Police, Community Caretaking and the Fourth Amendment, 1998 U. Chi. Legal. F. 261.

Robert A. Ragazzo, Reconsidering the Artful Pleading Doctrine, 44 Hastings L.J. 273 (1993).

Robert A. Ragazzo, Transfer and Choice of Federal Law: The Appellate Model, 93 Mich. L. Rev. 703 (1995).

Robert A. Ragazzo, Unifying the Law of Hostile Takeovers: Bridging the Unocal/Revlon Gap, 35 Ariz. L. Rev. 989 (1993).

Benjamin E. Rosenberg, Criminal Acts and Sentencing Facts: Two Constitutional Limits on Criminal Sentencing, 23 Seton Hall L. Rev. 459 (1993).

From time to time, I have been asked to speak on issues of federal appellate practice, which sometimes raise broader issues of legal policy, at continuing legal education seminars sponsored by bar organizations. For example, for the past several years I have been a participant in the appellate litigation seminar that the District of Columbia Bar organizes every October. For the past several years, I also participated as a panelist in appellate practice seminars organized by the National Association of Attorneys General. I also participated in a similar program sponsored by the New York Bar in New York City in 1999. In May 1999, I was a panelist at a conference organized by the United States Sentencing Commission and the Federal Bar Association; my panel's discussion addressed, among other things, constitutional issues raised by sentences imposed under the federal Sentencing Guidelines. I have not retained any notes reflecting my remarks as one of the panelists in such bar seminars, nor am I aware of the existence of any transcript of my remarks.

In the Spring of 1999, I participated in a debate organized by National Public Radio's Justice Talking on the public policy issues raised by a City of Chicago loitering ordinance, which was then under review by the Supreme Court of the United States. See City of Chicago v. Morales, 527 U.S. 41 (1997). I was asked to participate in that debate because I had authored an amicus brief in support of Chicago's position on behalf of the U.S. Conference of Mayors, the National League of Cities, and the National Governors' Association. My opponent in that debate was Harvey Grossman, the Legal Director of the American Civil Liberties Union of Illinois, who was counsel for the parties who sought to challenge the Chicago ordinance. The debate was broadcast in the Fall of 1999. A transcript is attached.

13. *Health:* What is the present state of your health? List the date of your last physical examination.

My last physical examination occurred on March 15, 2001. I am advised that I am in good health.

14. *Judicial Office:* State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

15. *Citations:* If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have never held judicial office.

16. *Public Office:* State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have never been a candidate for, or held, elective public office. I have served in the following appointive public offices:

Law Clerk to Hon. Amalya L. Kearse (Aug. 1986–July 1987), United States Court of Appeals for the Second Circuit, Foley Square, 40 Centre Street, New York, New York 10007.

Law Clerk to the Honorable Anthony M. Kennedy (Feb. 1988–Feb. 1989), United States Supreme Court, One First Street, N.E., Washington, D.C. 20543.

Assistant United States Attorney (Mar. 1990–May 1992), United States Attorney's Office, Southern District of New York, One St. Andrew's Plaza, New York, New York 10007.

Assistant to the Solicitor General (Sept. 1992–July 1997), Office of the Solicitor General, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

17. *Legal Career:*

a. Describe chronologically your law practice and experience after graduation from law school including

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

From August 1986 until July 1987, I served as a law clerk to the Honorable Amalya L. Kearse, United States Court of Appeals for the Second Circuit. From February 1988 until February 1989, I served as a law clerk to the Honorable Anthony M. Kennedy, Associate Justice, United States Supreme Court.

2. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

In addition to the clerkships identified above, I have been associated or employed by the following firms and agencies:

Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Suite 900, Washington, D.C. 20036, Of Counsel attorney, July 1997–December 1999, and Partner, January 2000–present.

Office of the Solicitor General, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, Assistant to the Solicitor General, Sept. 1992–July 1997.

Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, Associate, Sept. 1987–February 1988, February 1989–March 1990, and May 1992–September 1992.

United States Attorney's Office, Southern District of New York, One St. Andrew's Plaza, New York, New York 10007, Assistant United States Attorney, March 1990 to May 1992.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I was a corporate lawyer, engaged primarily in transactional work, during the approximately two years I worked at Wachtell, Lipton, Rosen & Katz.

After leaving Wachtell, Lipton in March 1990, I became an Assistant United States Attorney, a job I held for over two years. As an Assistant United States Attorney, I represented the government in federal criminal trials (both jury and non-jury), bail and change-of-plea hearings, and in appeals before the United States Court of Appeals for the Second Circuit.

I left the U.S. Attorney's Office in May 1992 to join the Office of the Solicitor General, where my practice principally involved representing the U.S. government in cases before the United States Supreme Court. I also handled some cases in the regional courts of appeals, and gave advice to government agencies concerning whether adverse trial court rulings should be appealed to a regional court of appeals. Although most cases I personally argued before the Supreme Court involved criminal-law issues, a significant portion of my practice—*e.g.*,, advising other agencies on the advisability of appealing adverse decisions and opposing petitions for a writ of certiorari—raised a broad range of issues typical of civil litigation. I remained in the Office of the Solicitor General for approximately five years.

I left the Solicitor General's office to join the Washington, D.C. office of Gibson, Dunn & Crutcher in July 1997. My practice at Gibson, Dunn has primarily involved handling appellate matters, usually in civil cases, although I have also occasionally handled trial-court litigation.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

During my nearly eight years in public service, my client was the United States of America. In private practice, my former clients have included, among others, major investment banks acting as advisors in mergers and acquisitions, health care providers defending against malpractice, ERISA and RICO allegations, corporations seeking to set aside excessive damage awards, individuals seeking to set aside criminal convictions, and a *qui tam* relator seeking to sue a State of the Union for fraud.

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Both as a governmental lawyer and as a lawyer in private practice, I have appeared in court frequently.

2. What percentage of these appearances was in: (a) federal courts; (b) state courts of record; (c) other courts?

The great majority of my court appearances (approximately 99%) occurred in federal court. I have rarely appeared in state courts.

3. What percentage of your litigation was: (a) civil; (b) criminal?

Approximately 70% of the litigation I personally handled was criminal. The remainder was civil.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you

were sole counsel, chief counsel, or associate counsel.

I tried approximately ten cases to judgment while I was a federal prosecutor. I was chief counsel in four of those, and was sole counsel in the remainder.

5. What percentage of these trials was: (a) jury; (b) non-jury?

All but one of the cases (approximately 90%) were tried to a jury.

18. *Litigation:* Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case: (a) the date of representation; (b) the name of the court and the name of the judge or judges before whom the case was litigated; and (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. In re Managed Care Litigation, MDL No. 1334 (S.D. Fla., Moreno, J.). I am counsel for Aetna, Inc. and its healthcare subsidiaries (''Aetna'') in a series of putative nationwide class actions that have been filed throughout the United States against Aetna and most members of the managed care industry. The Judicial Panel on Multidistrict Litigation has consolidated those cases for coordinated pretrial proceedings in the United States District Court for the Southern District of Florida. The suits generally allege that cost-containment mechanisms used by Aetna and other managed care companies amount to violations of RICO, ERISA and various state laws—because they allegedly provide incentives for physicians to provide deficient medical care, and thus fraudulently reduce the value of the insurance coverage purchased by subscribers—and they seek billions of dollars in damages. I share with one of my partners the day-to-day supervision of this litigation on behalf of Aetna, which is the largest defendant. In that connection, I have been responsible for developing our client's legal strategy, preparing all briefs in the case, and arguing dispositive motions.

Opposing Counsel: Jerome Marcus, Berger & Montague, 1622 Locust Street, Philadelphia, PA 19103; Tel.: (215) 875–3013.

Co-counsel: (1) Richard Doren, Gibson, Dunn & Crutcher, 333 South Grand Avenue, Los Angeles, California 90071; Tel.: (213) 229–7038 (co-counsel for Aetna); (2) John D. Aldock, Shea & Gardner, 1800 Massachusetts Avenue, N.W., Suite 800, Washington, D.C. 20036; Tel.: (202) 828–2140 (counsel for Prudential); (3) Brian D. Boyle, O'Melveny & Myers, LLP, 555 13th Street, N.W., Washington, D.C. 20004; Tel.: (202) 383–5263 (counsel for Humana); (4) Edward M. Crane, Skadden Arps Slate Meagher & Flom, LLP, 333 West Wacker, Suite 2100, Chicago, Illinois 60606: Tel.: (312) 407–0522 (counsel for Foundation Health Systems); (5) Robert Denham, Powell, Goldstein, Frazer & Murphy LLP, 191 Peachtree Street, N.E., 16th Floor, Atlanta, Georgia 30303; Tel.: (404) 572–6940 (counsel for Coventry); (6) William E. Grauer, Cooley Godward LLP, 4365 Executive Drive, Suite 1100, San Diego, California; Tel.: (858) 550–6050 (counsel for PacificCare); (7) John G. Harkins, Jr., Harkins Cunningham, 2800 One Commerce Square, 2005 Market Street, Philadelphia, Pennsylvania 19103; Tel.: (215) 851–6701 (counsel for CIGNA); and (8) Jeffrey S. Klein, Weil, Gotshal & Manges, 767 Fifth Avenue, New York, New York 10153; Tel.: (212) 310–8790 (counsel for United Healthcare)

I have also briefed numerous cases in the federal courts of appeals and in the Supreme Court of the United States, and I have personally argued 15 case before the Supreme Court. Among the cases I have argued before that court are:

2. Stricter v. Greene, 527 U.S. 263 (1999). I represented the petitioner, a death row inmate, in a federal habeas challenge to his conviction and death sentence. The principal issue in the case was whether the prosecution violated the rule of Brady v. Maryland, 373 U.S. 83 (1963), by failing to disclose to defense counsel that a purported eyewitness to the crime had been repeatedly interviewed by the police and had made statements casting doubt on her in-court identification. I was the principal draftsman of the petitioner's merits briefs in the United States Supreme Court, and also argued the case before the Supreme Court. The Supreme Court ruled that the evidence was exculpatory under Brady, but that it was not sufficiently material to create a reasonable probability of acquittal.

Co-Counsel: Barbara Hartung, 1001 East Main Street, Richmond Virginia 23219; Tel.: (804) 649–1088.

Opposing counsel: Pamela A. Rumpz, Assistant Attorney General, Commonwealth of Virginia, 900 East Main Street, Richmond, Virginia 23219; Tel.: (804) 786–2071.

3. United States v. Gonzales, 520 U.S. 1 (1997). I represented the United States. The issue in the case was whether 18 U.S.C. §924(c), which provides mandatory sentences for defendants who use firearms in connection with narcotics crimes or violent offense, permits federal courts to impose a concurrent sentence when the defendant already is serving a state sentence. I was the draftsman of the certiorari petition and the petitioner's briefs on the merits, and also argued the case before the United States Supreme Court. The Supreme Court ruled that Section 924(c) requires that sentences under that provision must be consecutive to any other sentence that the defendant might be serving.

Opposing counsel: (1) Angela Arellanes, 320 Gold Avenue, S.W., Suite 1111, Albuquerque, New Mexico 87102; Tel.: (505) 247–2417, (2) Edward Bustamante, 610 Gold Street, S.W., Albuquerque, New Mexico 87102; Tel.: (505) 842–9093, and (3) Roberto Albertorio, One Civic Plaza, Room 4030, Albuquerque, New Mexico 87102; Tel.: (505) 924–3917.

4. Old Chief v. United States, 519 U.S. 172 (1997). I argued the case before the United States. The issue for the Court was whether a criminal defendant may ever prevent the government from introducing evidence of a fact relevant to the prosecution's case by stipulating to the existence of that fact. The Supreme Court ruled that a criminal defendant may, in some circumstances, keep the government from introducing evidence of the defendant's prior conviction if the defendant offers to stipulate before the jury that he is indeed a felon.

Opposing counsel: Daniel Donovan, Federal Defenders of Montana, 9 Third Street North, Great Falls, Montana 59403; Tel.: (406) 727–5328.

5. Montana v. Eglehoff, 518 U.S. 37 (1996). I represented the United States as amicus curiae in support of the position of the State of Montana. The issue in the case was whether the Due Process Clause of the Fourteenth Amendment, invalidates state legislation that renders any evidence of involuntary intoxication irrelevant and inadmissible in a prosecution for intentional homicide. I was the draftsman of the United States' brief, and also presented argument before the United States Supreme Court in support of Montana position. By a vote of 5 to 4, the Court upheld the constitutionality of the statute.

Co-counsel: Pamela P. Collins, Assistant Attorney General, Justice Building, 215 North Sanders, Helena, Montana 59620; Tel.: (406) 444–2026.

Opposing counsel: Ann C. German, P.O. Box 1530 Libby, Montana 59923; Tel.: (406) 293–4191.

6. Degen v. United States, 517 U.S. 820 (1996). I represented the United States. The petitioner had been indicted on federal narcotics violations and had fled to Switzerland to avoid prosecution. The issues for the Supreme Court were (i) whether federal courts possess inherent authority to forfeit property civilly, without a hearing, when the party claiming such property is a fugitive from United States justice, and (ii) whether such a forfeiture would violate the claimant's due process rights. I was the principal draftsman of the government's brief and also argued the case before the Supreme Court. The Court ruled that federal courts slack inherent authority to forfeit a fugitive's property.

Opposing counsel: Lawrence S. Robbins, Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W. Washington, D.C. 2006; Tel.: (202) 463–2000.

7. Citizens Bank of Maryland v. Strumpf, 516 U.S. 16 (1996). I argued the case on behalf of United States as amicus curiae in support of reversal. The issue in this case was whether the ''automatic stay'' provisions of the Bankruptcy Code, see 11 U.S.C. §362, are violated when a creditor temporarily withholds payment of a debt that the creditor owes to the bankrupt debtor in order to protect the creditor's set-off rights. The Supreme Court ruled that a creditor in such circumstances does not violate the Code's ''automatic stay'' provisions.

Co-counsel: Irving E. Walker, Miles & Stockbridge, P.C., 10 Light Street, Baltimore, Maryland 21202; Tel.: (410) 727–6464.

Opposing counsel: Roger Schlossberg, 134 West Washington Street, Hagerstown, Maryland 21740; Tel.: (301) 739–8610.

8. United States v. Robertson, 514 U.S. 669 (1995). I wrote all briefs and argued the case on behalf of the United States. The principal issues in this case were (i) whether the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 et seq. reaches the full extent of conduct that Congress could conceivably regulate under the Commerce Clause of the U.S. Constitution, and (ii) whether the evidence in the case satisfied the statute's ''interstate commerce'' requirement. The Court ruled that the evidence submitted by the government—including evidence that the defendant shipped materials from California to Alaska—satisfied the statutory and constitutional requirements.

Opposing counsel (last known address and telephone number): Glenn Stewart Warren, 2442 Fourth Avenue, San Diego, California 92101; Tel.: (619) 232–6052.

9. United States v. Mezzanatto, 513 U.S. 196 (1995). I wrote the briefs and argued the case on behalf of the United States. In order to induce the prosecutor to engage in plea negotiations, the defendant in this case had agreed to waive the protections of Fed. R. Evid. 410, which ordinarily render all evidence of plea negotiations inadmissible in court. The defendant later changed his mind, and testified at trial to a story that was inconsistent with what he had told the prosecutor. In reliance on the defendant's agreement, the trial court permitted the prosecutor to impeach the defendant with his prior inconsistent statements. The U.S. Court of Appeals for the Ninth Circuit reversed, ruling that the rules of evidence—including Rule 410—may never be waived by agreement of the parties. The Supreme Court granted certiorari to review that conclusion, and, after briefing and argument, reversed the Ninth Circuit's ruling. The Supreme Court held that rules of evidence, like most rights conferred by statute, may be waived by agreement of the parties.

Opposing counsel: Mark R. Lippman, 8070 La Jolla Shores Drive, La Jolla, California 92037; Tel.: (858) 456–5840.

10. National Organization for Women, Inc. v. Scheidler, 510 U.S. 249 (1994). I wrote the briefs and argued the case on behalf of the United States as amicus curiae in support of petitioner. The issue in the case was whether the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq. incorporates a ''pecuniary purpose'' requirement for liability, so that only criminal enterprises that violate RICO for mercenary reasons would be liable civilly or criminally. (That interpretation of RICO had originated with the U.S. Court of Appeals for the Second Circuit, which had reversed the criminal convictions of several Croatian terrorists who engaged in multiple bombings and arsons for ''ideological'' reasons related to their desire to achieve independence for their homeland). The Supreme Court unanimously held that RICO does not embody a ''pecuniary purpose'' requirement.

Co-counsel: Fay Clayton, Robinson, Curley & Clayton, P.C., 300 South Wacker Drive, Suite 1700, Chicago, Illinois 60606; Tel.: (312) 663–3100.

Opposing counsel: G. Robert Blakey, Notre Dame Law School, Notre Dame, IN 46556; Tel.: (219) 231–6371.

19. *Legal Activities*: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

In addition to the litigation described above, my practice has included preparing for civil litigation that did not proceed to trial or that was settled during trial; handling an international contract dispute that arose out of the privatization of oil fields and refineries in a central Asian republic (I and one of my partners represented our client in the arbitration of that contract dispute, which was conducted under UNCITRAL rules); advising clients conducting internal corporate investigations into possible violations of federal criminal law; and briefing and/or arguing appeals in civil and criminal cases.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to be derived from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I do not expect to have any deferred income or other benefits from any previous business relationships or employment. If I am confirmed, my law firm has agreed to pay out my capital, together with my annualized share of the firm's income for the current year, in cash at the time I resign my partnership to begin judicial service.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the dictates of the Code of Judicial Conduct and the provisions of applicable recusal laws, such as 28 U.S.C. §455.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please refer to my Ethics in Government Act report.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

Please refer to attached statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have never played any role in any political campaign.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for ''every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged.'' Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

The bulk of my legal career has been in the public sector, but I have consistently devoted time to pro bono obligations while working in private practice. During my first stint in private practice (at Wachtell, Lipton), I accepted an appointment to represent an incarcerated defendant who was seeking habeas relief from his state conviction. I wrote all appellate briefs and argued the case before the United States Court of Appeals for the Second Circuit. See Campaneria v. Reid, 891 F.2d 1014 (2d Cir. 1989). The amount of time devoted to this matter was approximately 300 hours.

Since returning to private practice (at Gibson Dunn), my pro bono activities have included:

a. Writing an amicus curiae brief on behalf of the U.S. Conference of Mayors, the National League of Cities and the National Governors' Association in City of Chicago v. Morales, 527 U.S. 41 (1997). Morales was a constitutional challenge to a Chicago ordinance that made it unlawful for members of street gangs to loiter in public spaces. The amicus brief, to which I devoted approximately 120 hours, supported the arguments made by the City of Chicago.

b. Representing a death row inmate in a challenge to his conviction and sentence. See Strickler v. Greene, 527 U.S. 263 (1999). I was the principal draftsman of petitioner's Supreme Court briefs on the merits and argued the case on his behalf in the Supreme Court. I devoted approximately 450 hours to this representation.

c. Representing the City of Annapolis, Maryland in defending the City's loitering ordinance—which prohibits loitering with the intent to engage in drug dealing—from constitutional attack. See N.A.A.C.P., Anne Arundel County Branch v. City of Annapolis, Civ. No CCB–00–771 (D. Md). I have devoted approximately 120 hours to that representation. In April 2001, after the district court issued a ruling invalidating the ordinance, the City of Annapolis determined not to further defend the constitutionality of the ordinance.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates—through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not currently belong, nor have I ever belonged, to any organization that discriminates in any way on the basis of race, sex, or religion.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no selection commission that recommends candidates for nomination to the United States Court of Appeals for the District of Columbia Circuit. Attorneys from the White House Counsel's Office asked me to interview for the position. I was interviewed once by two White House attorneys. I was later informed that I was likely to be nominated for the position. I was nominated on May 9, 2001.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your view on the following criticism involving ''judicial activism'': The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become a target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this ''judicial activism'' have been said to include: (a) a tendency by the judiciary toward problem-solution rather than grievance-resolution; (b) a tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals; (c) a tendency by the judiciary to impose broad, affirmative duties upon governments and society; (d) a tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and (e) a tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

In my view, federal judges may decide only concrete cases or controversies that properly come to them; they may not ''make law'' or reach beyond the facts and circumstances of the particular case they must decide. That limited judicial role flows from the text of the Constitution, the separation of powers inherent in our constitutional scheme, the federal-state balance, and the presumption of validity that generally attaches to legislative actions.

FINANCIAL STATEMENT NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and

other immediate members of your household.

ASSETS

Cash on hand and in banks	$73K
U.S. Government securities—add schedule (savings bonds)	12K
Listed securities—add schedule	0
Unlisted securities—add schedule	0
Accounts and notes receivable:	0
Due from relatives and friends	0
Due from others	0
Doubtful	0
Real estate owned—add schedule 1105 Prince St., Alex., VA	575K
Real estate mortgages receivable	0
Autos and other personal property	120
Cash value—life insurance	0
Other assets—itemize:	
IRAs, 401(k), and KEOGH Plans	164K
Total Assets	824K

CONTINGENT LIABILITIES

As endorser, comaker or guarantor	0
On leases or contracts	0
Legal Claims	0
Provision for Federal Income Tax	0
Other special debt	0

LIABILITIES

Notes payable to banks—secured	0
Notes payable to banks—unsecured	0
Notes payable to relatives	0
Notes payable to others	0
Accounts and bills due	0
Unpaid income tax	0
Other unpaid tax and interest	0
Real estate mortgages payable—schedule (schedule attached	386K
Chattel mortgages and other liens payable	0
Other debts—itemize	
DOJ TSP Loan	19K
Mastercard	10K
American Express	10K
Student Loan	21K
Total liabilities	446K
Net Worth	378K
Total liabilities and net worth	

GENERAL INFORMATION

Are any assets pledged? (Add schedule.)	0
Are you defendant in any suits or legal actions?	0
Have you ever taken bankruptcy?	No

MIGUEL A. ESTRADA MORTGAGES

1. Temple-Island Mortgage Corporation (first mortgage on residence) $256,000.

2. Bank of America (line of credit secured by second mortgage on residence) $130,000, Total $386,000.

FINANCIAL DISCLOSURE REPORT FOR NOMINEES

I. POSITIONS. Partner, Gibson, Dunn & Crutcher LLP; Trustee, Supreme Court Historical Society; Director, Center for Community Interest.

II. AGREEMENTS. 2001 Termination of Partnership Agreement.

III. NON-INVESTMENT INCOME 1999 Gibson, Dunn & Crutcher LLP, $301,000; 2000 Gibson, Dunn & Crutcher LLP $510,000; 1999 Department of Justice (attorney); 2000 Department of Justice (attorney).

VI. LIABILITIES—American Express, Citibank MasterCard, Alabama Comm'n on Higher Education.

VII. Page 1 INVESTMENTS and TRUSTS—income, value, transactions: Solomon Smith Barney Money Market Fund; Citibank Accounts America's First Federal; Credit Union Savings Accts; Vanguard 500 Index Fund; Dreyfus S&P 500 Index Fund; SouthTrust Bank Account.

VIII. ADDITIONAL INFORMATION OR EXPLANATIONS

Part II (Agreements): In the event I am confirmed, my law firm, Gibson, Dunn & Crutcher LLP, has agreed to pay my share of the firm's capital and insurance reserve in cash promptly after the resignation from the partnership. The firm has also agreed to pay me, at the same time and also in cash, my annualized share of the firm's income for the current year, computed on the basis of the per-share income earned by the firm during the year 2000.

IX. CERTIFICATION.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C. app. §501 et. seq., 5 U.S.C. §7353 and Judicial Conference regulations.

Mr. REID. Will the Senator from Utah yield for a question?

Mr. SESSIONS. Will the Senator yield?

Mr. HATCH. Let me yield first to the distinguished Senator from Alabama and then I will be happy to yield to my friend from Nevada without losing my right to the floor.

Mr. SESSIONS. I will ask the distinguished chairman of the Judiciary Committee, who has been involved in these matters for so many years, aren't we confusing here home State Senators' objections with a filibuster? And isn't it true that, to this very day, really earlier in this year, the Democratic Senators on the Judiciary Committee virtually demanded home State Senators be given even more power to block nominees than in the past?

Mr. HATCH. I believe there have been some demands that have been far in excess of what has been allowed by their own chairmen in the past, especially Chairman KENNEDY and Chairman BIDEN. I think the Senator states it correctly.

Mr. SESSIONS. My second question, Mr. President, would be: The point is there has been no movement from the other side to change the basic traditional view of the power of home State Senators to object. In fact, they affirm that and insist they should be given that, and even expand it.

Mr. HATCH. I think the Senator is correct.

I said I would yield to the distinguished Senator from Nevada.

Mr. REID. Without the Senator losing his right to the floor, I attempted 20 minutes or so ago to add a little levity to this debate, indicating the distinguished Senator from Utah is aware I attempted to add a little levity by suggesting you had joined in the filibuster. That didn't go over. It wasn't very funny, as I learned very quickly.

Mr. HATCH. It wasn't very funny, but I appreciate the Senator trying to interject levity. We could use maybe a little bit around here, but this is a tough issue and we are all upset.

Mr. REID. It should be a little more humorous, obviously, than I was able to provide.

Mr. HATCH. I respect the Senator, anyway.

Mr. REID. I ask the distinguished Senator from Utah, we are here. It is now 10:30 at night.

We have an agenda with people who are going to be covering the floor for us. But I ask the Senator, because we have other people on the floor: How much longer does he think he is going to want to take tonight on this matter, just so my colleagues over here know. Obviously the Senator knows. He knows a little more than I know because it seems to be thinning out a little bit here. Can the Senator inform the Senate—especially this Senator—as to how much longer we are going to go tonight?

Mr. HATCH. I am not quite sure. I have a statement to make, and I want to get that in the RECORD. I would like to take any questions my colleagues have on either side of the aisle. This is an important issue. So it is 10:30 at night. It is nothing to me. I am fighting for Miguel Estrada.

Mr. REID. Will the Senator yield for one final question?

Mr. HATCH. Sure, without losing my right to the floor.

Mr. REID. I understand the importance of this nomination. I know the Senator believes I understand its importance. I am not in any way denigrating or trying to stop anyone from speaking tonight. I only would ask if the Senator would give us some general idea as to whether we are going to be here all night or another hour or two hours. Can the Senator give us any indication?

Mr. HATCH. I am prepared to be here all night, if that is what it takes. I do not want to foreclose any questions from my colleagues. I don't know how many questions there will be. But I am here to answer them, and I would like to make a statement for the RECORD before we finish. I will try to expedite that, if I can.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I have been listening to these brilliant legal minds asking questions.

Mr. REID. Mr. President, does the Senator from Oklahoma have the floor?

Mr. INHOFE. Yes.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. I yield for a question.

Mr. INHOFE. I thank the Senator from Utah.

I was trying to get across with just a prelude, if you will accept that. There are several of us here who are not attorneys and who are certainly not great legal minds. As we look at this, I recall, though, another hearing, the origin of filibuster dealing back with the days of civil rights. And what comes to my mind is, as I have been listening to these questions being asked and the objections to Miguel Estrada by the minority—correct me if I am wrong—that the filibuster was created and maintained for some civil rights legislation in the first place. Is that correct?

Mr. HATCH. That is generally the viewpoint around here.

Mr. INHOFE. Will the Senator share with those of us who are not attorneys the origin for filibuster?

Mr. HATCH. The filibuster comes from the word filibustero, which is Spanish. It is a word for pirating, by taking improper control, in this case of the Senate. I hope I am saying that right. I think I am pretty close.

Mr. INHOFE. I thank the Senator.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Mr. President, will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. TALENT. I wonder if my colleague read the statement by former Congressman Herman Badillo from New York who called the opposition to block Mr. Estrada ''grandstanding'' and ''this treatment of Mr. Estrada is demeaning and unfair not only to the nominee but the confirmation process and the integrity of the Senate.''

I wonder if my colleague believes that is a pretty remarkable statement coming from a former Democratic Member of Congress about the opposition being mounted to a fellow Hispanic.

Mr. HATCH. I did read the quote in the Wall Street Journal, and I thought it was a tremendous article. It was written by the former Democratic Congressman from the State of New York. I was privileged to hear Congressman Badillo the other day at our press conference when the Hispanic community came together to decry what is going on against Miguel Estrada. He made one of the most profound and strong statements at that press conference. I have nothing but respect for him. I respected him when he was in Congress, and he certainly has been speaking up, and he is a Democrat.

But he is not the only Democrat. Seth Waxman is one of the all time great Solicitors General—wonderful Democrat attorney who I happen to have a lot of respect for. He has spoken up for Miguel Estrada as have so many other colleagues at the Solicitor General's Office. But Mr. Badillo very firmly feels this is an injustice, that it is a double standard, that this is prejudice against this nominee. I can't speak for him, but this is what I got out of his remarks and out of his article; and that there is no justification whatsoever in fighting against Miguel Estrada, and absolutely no justification in conducting the first filibuster in the history of the country against a circuit court of appeals nominee.

I have to say I was very impressed with his article, and I appreciate the Senator reading from it.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, will the Senator yield for a question?

Mr. HATCH. I am delighted to, without losing my right to the floor.

Mr. GRAHAM of South Carolina. It is my understanding one of the attacks is Mr. Estrada is in fact a rightwing ideolog who may use his political philosophy to shape the law in an unfair way. Is that correct?

Mr. HATCH. I suspect that is what is worrying people on the other side.

Mr. GRAHAM of South Carolina. Is my understanding correct that it is not only the Senator's suspicion, but they have actually said that? People on the other side have said one of the concerns they have about this gentleman is they are suspicious of his ideology and that he may be inflexible in applying the law in a fair way. Is that correct?

Mr. HATCH. My colleagues on the other side who don't know Miguel Estrada—there is only one person who has given their criticism, and that was Professor Bender from Arizona State University who I think has more than been rebutted here on the floor.

Mr. GRAHAM of South Carolina. Along those lines, if the Senator will continue to yield.

Mr. HATCH. Could I take a moment to read a few paragraphs from the White House letter responding to the Senate Democrats' continuing action here on the notion that Mr. Estrada did not answer questions of the Members?

When asked by Senator EDWARDS about judicial review, Mr. Estrada answered:

> Courts take the laws that have been passed by you and give you the benefit of understanding that you take the same oath that they do to uphold the Constitution. And, therefore, they take the laws with the presumption that they are constitutional. It is the affirmative burden of the plaintiff to show that you have gone beyond your oath. If they come into court, then it is appropriate for courts to undertake to listen to the legal arguments, which is that the legislature went beyond its role as a legislature and invaded the Constitution.

That is a deliberative and very important answer to questions they claim he never answered.

Mr. GRAHAM of South Carolina. Will the Senator continue to yield for one more question?

Mr. HATCH. I would be delighted to, without losing my right to the floor.

Mr. GRAHAM of South Carolina. Would the Senator agree with me that if one of the really serious questions about whether or not this man is a rightwing ideolog who couldn't shape the law in a proper fashion—that any rightwing ideolog would have a very difficult time working for the Clinton administration? Would you agree with me about that concept?

Mr. HATCH. That was my experience with the Clinton administration. I don't know of any rightwing ideolog——

Mr. GRAHAM of South Carolina. Did this gentleman in fact work for the Clinton administration?

Mr. HATCH. He did, indeed, and he received rave reviews for his work at the Solicitor General's Office in the Clinton administration by a Democrat Solicitor General.

Mr. GRAHAM of South Carolina. Will the Senator agree that for any conservative to be able to work for the Clinton administration and do well shows a tremendous amount of tolerance?

Mr. HATCH. I certainly agree with that. Mr. Waxman, who is a highly regarded and respected lawyer, was the Solicitor General—one of them. Mr. Estrada worked under three Democrat Solicitors General who saw his work product. Mr. Waxman is highly respected. I doubt he would put his reputation on the line, as he did, by vouching for Mr. Estrada if he were not absolutely convinced he would be a fair and unbiased Federal judge. That is none other than Seth Waxman, the Solicitor General in the Clinton administration.

I don't understand all this argument by the other side and why a filibuster of this highly qualified person who has the highest rating of the American Bar Association, their gold standard. I have to say I have to admit it is a good standard at this point, too. They are doing a fair job. It isn't just because of Mr. Estrada I say that. I have been saying it for a couple of years. But one time I wasn't very pleased with it.

Mr. ENZI. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. ENZI. In the Senator's 27 years serving in this body, has the Senator seen anything that has progressed on a judicial nomination the way this nomination has, and does he have any concern this may be setting a precedent?

Mr. HATCH. There is no question that this is setting a precedent. In response to my colleague's very important question, this is a very terrible precedent because if the Democrats succeed in filibustering the first Hispanic judge nominee to the Circuit Court of Appeals of the District of Columbia—the first filibuster in the history of the country, a true filibuster, then Katy bar the door. I remember there were some on our side who wanted to filibuster, and cooler minds took over and said, We are not going to do that. First of all, we think it is wrong.

Second, we think it is unconstitutional to do it.

Third, it isn't fair to the President, to the Senate, to the nominee, nor to the process. It isn't fair. And that is the position we took.

And now we have what I consider to be a very unfair process, for no good reason, because I have not heard one substantive argument against Miguel Estrada, not one in all of this debate, other than: We didn't like his answers. Well, that is tough. Vote against him if you don't like his answers. That is your right. Some of our people voted against some of their judges because they did not like their answers. That is OK. It is honorable.

But do not filibuster a circuit court of appeals nominee or a Federal judge of any stature.

Mr. SANTORUM. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. SANTORUM. Mr. President, has any Member of the Senate questioned the nominee's intelligence?

Mr. HATCH. Not one. Nobody could. We know how bright he is.

Mr. SANTORUM. And has any person questioned his temperament?

Mr. HATCH. Yes, Paul Bender has. But he——

Mr. SANTORUM. Has any Member of the Senate questioned his temperament?

Mr. HATCH. There have been some who have been concerned about that because of Mr. Bender's comments. But Mr. Bender, when he was his supervisor at the Department of Justice, gave him rave reviews in all categories.

Now, I think the contemporaneous rave reviews, which Mr. Bender tries to get out of now, should take precedence over his partisan comments made long after the fact.

Mr. SANTORUM. Will the Senator yield for a further question?

Mr. HATCH. Without losing my right to the floor.

Mr. SANTORUM. I ask the Senator from Utah, what is generally the standard by which the Senate is to analyze nominees and pass judgment on them? What are the qualities and characteristics of a nominee that are the traditional areas by which individuals who have been nominated are judged?

Mr. HATCH. Well, for a Federal circuit court nominee, it would be honesty, integrity, temperament, physical capacity—or ability to work—but, in addition, an FBI report that is favorable, and an ABA rating, that isn't necessarily followed but, nonetheless, is helpful if it is favorable. And in this case it is not only favorable, but it is the highest rating they could possibly give. And there are other legitimate considerations, but all of them he has passed.

Mr. SANTORUM. Further, I guess the question I have is, other than Mr. Bender's comment, which came well after the fact and does not comport with his contemporaneous reports—other than that one particular statement—of all the qualifications that are traditionally used by Members of the Senate to evaluate nominees for judicial positions, circuit court positions, has any Member of the Senate questioned any of those qualities?

Mr. HATCH. Not really. Not really. Not really, other than some who relied on Mr. Bender's comments. And I might add that Mr. Bender worked for Seth Waxman, who rebutted what Mr. Bender said, and put his reputation on the line as a Democrat former Solicitor General, and speaks very favorably on all of those issues with regard to Mr. Estrada.

I would certainly give much more credibility to Mr. Waxman than I would to Mr. Bender, who I think has acted reprehensibly under the circumstances.

Mr. SANTORUM. So, Mr. President, if the Senator will yield for just a clarifying question.

Mr. HATCH. Without losing my right to the floor.

Mr. SANTORUM. What I understand the Senator from Utah is saying is that on every quality by which judicial nominees are judged traditionally here in the Senate, on every single one of those qualities, he has either had no argument from the other side that he does not meet those standards or, in many cases, he has exceeded those standards, except in one case with respect to judicial temperament. In that case, we have the person who makes those claims having written contemporaneous reports that rebut his own later testimony, and the supervisor rebutting that testimony. So other than that one case, on all of the other qualities by which we are to judge a candidate here, there is no argument about his qualifications?

Mr. HATCH. That is right. By the way, when the ABA does its review, it is looking for every one of those qualities. It is looking for people who would rebut those qualities. It is looking for people who both support him and are opposed to him. It is looking for people who say he does not have the right temperament, or he does not have the right intelligence, or he does not have the right integrity, or he does not have the right health. The ABA goes into all of that. So does the administration. And so do we as Senators if we want to.

In this particular case, virtually everybody who worked with him gives him high raves.

Mr. SANTORUM. Mr. President, if the Senator will yield for an additional question.

Mr. HATCH. Without losing my right to the floor.

Mr. SANTORUM. Given that he is qualified on all of those grounds, one is left with the possibility that he may be objected to because of his ideological position. Has any comment been made or any evidence been produced by any Senator that his ideology is out of the mainstream of traditional jurisprudence in any of the activities in which he has been involved?

Mr. HATCH. I am not aware of anyone. I have heard remarks on the floor by colleagues on the other side that they are concerned he may not uphold all of their believed decisions. But he has said he would uphold precedent, that he would abide by the law as enunciated by the Supreme Court, and that he would examine everything as thoroughly as he could, do the very best job he could to be fair. He has said exactly the right things you would want a circuit court nominee to say.

Mr. SANTORUM. Mr. President, if the Senator would yield for an additional question, I would just ask that to be clarified. Has the other side produced any evidence that, in the history of this nominee as a lawyer, he has produced any information or any information has been produced that shows that his principles or ideology are outside of the mainstream? Has any evidence been produced to that effect?

Mr. HATCH. Absolutely none. And that is one reason it is a fishing expedition—because they want to see if they can find something for which they can criticize him. But not only did they wait 615 days to hold a hearing—which they controlled, they chaired, they questioned—but they also allowed for written questions afterwards. And only two of them—the Senator from Illinois and the Senator from Massachusetts—prepared written questions for him, which he answered, which we put into the RECORD today.

Frankly, I do not know of anyone who could point out any defect in this man's character and his ability to be a great circuit court of appeals judge.

Mr. SCHUMER. Will my colleague yield?

Mr. INHOFE. Will my colleague yield?

Mr. HATCH. To further answer that question, I would like to read from the letter the White House just sent up here today:

> In some recent hearings, including Mr. Estrada's, Senator Schumer has asked that nominees identify particular Supreme Court cases of the last few decades——

I think the correct reference was to the last 40 years, although I have heard Senator after Senator on the other side talk about the whole jurisprudence of the country, even though the question is referring to the last 40 years. But:

> In some recent hearings, including Mr. Estrada's, Senator Schumer has asked that nominees identify particular Supreme Court cases of the last few decades with which they disagree. But the problems with such a question and answer were well stated by Justice Stephen Breyer.

Of course, Justice Breyer is a Democrat, and he is now sitting on the Supreme Court.

The White House letter goes on:

> As Justice Breyer put it, ''Until [an issue] comes up, I don't really think it through with the depth that it would require . . . so often, when you decide a matter for real, in a court or elsewhere, it turns out to be very different after you've become informed and think it through for real than what you would have said at a cocktail party answering a question.''
>
> Senator Schumer also has asked nominees how they would have ruled in particular Supreme Court cases. Again, a double standard is being applied. The nominees of President Clinton did not answer such questions. For example, Richard Tallman, a nominee with no prior judicial service who now serves on the Ninth Circuit, not only would not answer how he would have ruled as a judge in Roe v. Wade—but even how he would have ruled in Plessy v. Ferguson, the infamous case that upheld the discredited and shameful ''separate but equal'' doctrine. So, too, in the hearing on President Clinton's nomination of Judges Barry and Fisher, Senator Smith asked whether the nominees would have voted for a constitutional right to abortion before Roe v. Wade. Chairman Hatch interrupted Senator Smith to say ''that is not a fair question to these two nominees because

regardless of what happened pre-1973, they have to abide by what has happened post-1973 and the current precedents that the Supreme Court has.''

In other words, I corrected a member of my party on the committee for asking that question of a Clinton nominee.

I hate to say it, but Miguel Estrada has answered their questions. He just hasn't answered them the way they wanted because they haven't been able to find any real defects in the answers he has given.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. ALEXANDER. Mr. President, will the Senator from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. ALEXANDER. Is the Senator from Utah aware that the following Supreme Court Justices had no prior judicial experience: Harlan Fiske Stone, Louis Brandeis, Hugo Black, and William O. Douglas?

Mr. HATCH. All giants of the law and none of whom had prior judicial experience.

Mr. ALEXANDER. Will the Senator yield for a further question?

Mr. HATCH. Yes.

Mr. ALEXANDER. Is the Senator aware that Felix Frankfurter and Earl Warren and Byron White and Lewis Powell and William Rehnquist and Stephen Breyer and Thurgood Marshall and Harry Blackmun and Warren Burger and Ruth Bader Ginsburg all had no prior judicial experience before they were appointed and confirmed to the U.S. Supreme Court?

Mr. HATCH. The Senator is exactly right. It just goes to prove how ridiculous the accusations are that some have made against Miguel Estrada. And it also goes to show that there is a double standard with regard to this Hispanic nominee.

Mr. ALEXANDER. Would the Senator yield for one final question?

Mr. HATCH. Without losing my right to the floor.

Mr. ALEXANDER. If the Senator would agree that all of those distinguished men and women with no prior judicial experience went on to become distinguished members of the U.S. Supreme Court, then can the Senator help us understand why the Members of the other side suddenly think it is not just important but disqualifying for someone who is nominated for a lower court to have no judicial experience? Why is this suddenly a new criterion when many of the most distinguished jurists in our country's history have had a diverse background of experience? Why is this suddenly a new standard for Miguel Estrada?

Mr. HATCH. The Senator really raises the issue—that is why there is a double standard—when all of these great Supreme Court Justices and others never had a day of judicial experience. I will submit Miguel Estrada has had more time in the judiciary than any of them had before they came to the court because not only has he argued before the Supreme Court, he was a clerk at the Supreme Court. He knows how the Court works. He knows how it moves, thinks, and breathes. Yet he is being mistreated here. Why the double standard? I can only think of one, and that is, they don't like what they think his philosophy is. They don't like the fact that a Republican President has supported him and has nominated him. They don't like the fact that he is a Hispanic conservative Republican. They are afraid that because he is a Hispanic conservative Republican, he might upset the balance on this court. And on this court, over 90 percent of the cases are unanimously decided.

I can tell you, all of their fears are unjustified. They are incredible the way they are being made. And they are, most importantly, unfair criticisms—most importantly, unfair. That is what bothers me. Why can't we be fair to this Hispanic nominee who has fought so hard to be part of the American dream and has earned a right? Why can't we be fair to him? What is wrong over here? What is wrong?

Not only is he a Hispanic nominee, a Republican, appointed by this President, whom I can see some of my colleagues don't like. I can accept that. But Miguel Estrada is a person who suffers from a handicap as well. He has a speech impediment. And if you watched the hearings, you could see that. Yet this young man has gone to the height of the profession in spite of those things. In spite of all the blocks, all the barriers, all the glass ceilings, all of the criticisms, he has lived the American dream. He is an example to every young lawyer, not just Hispanic young lawyers—especially to them—but every young lawyer of how you can fulfill the American dream.

I haven't seen a glove laid on him by the other side. Yet they are still filibustering him. Why the double standard? I think the Senator makes a tremendous set of points there. I am personally grateful for his participation.

Mr. ALEXANDER. I thank the Senator.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Mr. President, will my colleague from Utah yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. SCHUMER. My colleague from Utah has talked about how it is unfair to block a conservative nominee who is Hispanic. I would like to ask my colleague a question about Judge Rosemary Barkett, a Hispanic woman, born in Mexico, who spent her early years there before her parents immigrated to the United States. At an early age, she devoted herself to religious service and took vows to become a nun, then a schoolteacher, educating children in Florida, then became a very distinguished lawyer. After years in private practice, she underwent a rigorous screening process, and she was appointed to the State trial bench.

Mr. SANTORUM. Regular order.

Mr. SCHUMER. My question is, did my good friend from Utah not say about Judge Barkett:

> I led the fight to oppose [Judge Rosemary Barkett's] confirmation . . . because [her] judicial records indicated she would be an activist who would legislate from the bench?

Why is that any different than people on this side opposing Miguel Estrada because he might be a judicial activist who would legislate from the bench?

Why is my colleague accusing some on this side of being anti-Hispanic when he opposed a Hispanic judge similarly rising through the ranks because he disagreed with her philosophy?

I yield to my colleague for an answer to that question.

Mr. HATCH. I am happy to have the question from my dear colleague from New York. No. 1, I didn't know she was Hispanic. That is irrelevant to me anyway. I didn't know that. And if she is, I didn't know it until today. No. 2, I did read her judicial records. She was an activist. I did vote against her. But there is a difference here: I voted. I allowed you to have a vote. We had a vote, and she is now sitting on the court.

Mr. SCHUMER. Will my colleague yield for a further question?

Mr. HATCH. Sure.

Mr. SCHUMER. That is not the question I asked.

Mr. HATCH. You asked me why this is different from—wait, let me just finish.

Mr. SCHUMER. Will my colleague yield for an additional question?

Mr. HATCH. I will yield in just a second. Let me finish.

The PRESIDING OFFICER. Senators will address through the Chair, not to each other.

Mr. HATCH. Let me just finish here. You asked me why should this be any different from Miguel Estrada. There is nobody who can say that Miguel Estrada would legislate from the bench. There is nobody who has one ounce of information that would indicate he would be an activist judge. He isn't a judge. In fact, your side has argued that because he doesn't have judicial experience, he should not go on this position—some have argued. I hope it hasn't been the distinguished Senator from New York with his great knowledge of the law.

But there was a complete difference. The bottom line is this: Yes, I still think I was right on that particular vote. I may have been wrong, but I believed I was right. I did it sincerely. But she did have a vote. And she did pass, as I recall. She is now sitting as a judge. And I didn't hold her up, nor did I filibuster her, nor did I stand on this floor and say she should not have a chance for a vote, which is what your side—I should say, the Democrat side in this Chamber—is doing. I think there is a lot of difference, a world of difference, between my vote which was

cast sincerely. I have hardly voted against any judges since I have been here. I have been one of the strongest supporters of the Federal judiciary, if not the strongest supporter in this Chamber, ever since I have been here.

I can say this: I still believe my vote was right. If it was wrong, I apologize, but I didn't hold her up. I didn't filibuster her. I made sure she had a vote. And she got one, and she sits on the court today.

I can't ask a question, I guess, of the Senator, but I will just ask him to think it through. There is really a difference between Rosemary Barkett's handling and Mr. Estrada's. He is not even getting a chance for a vote. She did get her chance for a vote. I was one who helped her to get it.

Mr. SCHUMER. Will my colleague yield for an additional question?

Mr. HATCH. Without losing my right to the floor.

Mr. SCHUMER. Now that the Senator from Utah knows that Judge Barkett is Hispanic, would he in any way characterize his own action as anti-Hispanic?

Mr. HATCH. No. Nor am I characterizing yours that way. I have characterized it as anti-conservative Hispanic Republican, which is different.

The PRESIDING OFFICER. The Senators are advised not to address each other in the first person.

The Senator from Oklahoma is recognized.

Mr. INHOFE. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. INHOFE. It is a sincere last question. It is very important because I just got a phone call that I am going to be asked a question. First of all, I want to inform the Senator from Utah that in Oklahoma, our fastest growing population has been Hispanic for 25 years. I used to be a commercial pilot in Mexico. I know Hispanics.

When I was the mayor of Tulsa, we appointed the first Hispanic commission anywhere in the Southwest. It is still there today.

Now, the question is this, and I am going to be asked this question this weekend: Why was this Hispanic man, when nobody could question his qualifications, rejected? I have to answer this to the Hispanic commission of Oklahoma Saturday. What shall I say?

Mr. HATCH. There is no legitimate reason. It is a double standard. It is unfair. It is unfair to him and to our President, and he should be given at least a vote up or down. If my colleagues want to vote against him, that is their privilege. I would find no fault with that, even though I would disagree. It is unfair to the process and to the Senate.

What is going on here is that for the first time in history, a true filibuster is being waged against a nominee. It happens to be the first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia.

Mr. INHOFE. One last question. You have answered it already, and this is not whether or not we want to vote for or against Miguel Estrada, but does he deserve a vote, a public vote, on the floor of the Senate?

Mr. HATCH. Based upon the past history of this body, he deserves a vote. He is not getting it right now because of a filibuster for the first time in history. I have to say I decry that. That is not fair. It is a double standard. It is not right.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. COLEMAN. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. COLEMAN. Mr. President, I was an urban mayor of a vibrant, diverse community, including Chicanos, Salvadorans, and Puerto Ricans. Is it true that Miguel Estrada was attacked by Democratic Hispanic Members of the House as being Hispanic in name only?

Mr. HATCH. Well, in essence, because he was basically accused of not being Hispanic enough. I believe he was accused of being Hispanic in name only. They even said he didn't give back enough to the community, even though this man worked his guts out to get to where he is as a Hispanic lawyer in this country and deserves credit for it, and he is an idol and will be an idol to a lot of young people who want to do the same.

Mr. COLEMAN. Will the Senator yield for one more question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. COLEMAN. Is it true that Miguel Estrada—we have heard this before—came here as a teenager, learned to speak English, overcame a disability, graduated with honors in college, graduated with honors magna cum laude in law school, was editor of the law review, and he came back to public service? Is it true, then, that he is supported by many Hispanic organizations, really as a role model of the American dream?

Mr. HATCH. You should have heard the LULAC press conference this week. It was truly remarkable. He was accused by his opponents of being very unfair. LULAC happens to be the oldest Hispanic organization in the country. I believe, if I am right, the head of LULAC is a Democrat. I may be wrong. He is outraged, by the way. With this double standard that is going forth against Miguel Estrada, he is right to be outraged.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. SANTORUM. Isn't the difference the Senator from New York suggested about your comment about Judge Barkett and the situation with Miguel Estrada that Judge Barkett had an extensive record to analyze and you concluded by that record there was judicial activism? Is there any record that would lead any Member on the other side to suggest that Miguel Estrada would be a judicial activist?

Mr. HATCH. Of course, he is not a judge. Rosemary Barkett was a judge and had written a number of legal opinions. Some of them I thought were whacko and, frankly, were.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. I am still answering the question of the Senator from Pennsylvania.

Mr. DURBIN. I will bet you are.

Mr. SANTORUM. Will the Senator yield for an additional question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. SANTORUM. Is there anything in Mr. Estrada's background that would give you the opinion he would be a judicial activist on the court?

Mr. HATCH. Not any. In fact, even the Democrats who have known him have been praising him and have supported him. I might add that I don't think you would get better support than Ron Klain. There should not be a Democrat on that side who doesn't believe he is an honest lawyer. There should not be a Democrat on that side who doesn't accept Seth Waxman as a great lawyer, or one who doesn't believe Walter Dellinger is an exceedingly fine law professor, lawyer, and practicing attorney. There should not be a Democrat who should disagree with the former African-American Solicitor General of the United States.

I want to say this. I don't see any comparison with Rosemary Barkett at all. This man is not a judge. In accordance with the double standard, it has been said he should not be a judge because he has no judicial experience. We just have proven there are all kinds of Clinton judges who had no prior judicial experience. Yet we put them through and they are serving well, as have literally hundreds of judges who never had a day of judicial experience. It is just unfair, plain unfair.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. DURBIN. I ask the Senator from Utah, when the Senator was chairman of the Senate Judiciary Committee and refused a hearing and vote for Enrique Moreno, who was rated well-qualified for an appointment to the Fifth Circuit Court of Appeals, was the chairman of the committee, the Senator from Utah, aware of the fact that Mr. Moreno was born in Juarez, Mexico, in the company clinic of a smelting plant where his father was employed; when he was 2 years old, his family emigrated to El Paso, TX, where Mr. Moreno attended school and his father worked as a carpenter, his mother as a seamstress; he left El Paso to attend undergraduate and then law school at Harvard, and he

practiced for 19 years? Was the Senator from Utah aware of that background when he would not give him an opportunity for even a hearing before the Senate Judiciary Committee, or a vote before that committee, or on the floor of the Senate?

Mr. HATCH. Mr. President, I believe the Senator is being very offensive. He normally is quite partisan but quite reasonable. He is being offensive because he keeps referring to me as denying him a vote in committee when, in fact, I have explained before that there was no consultation. The Senators from Texas told me there was no consultation, which they demand on their side all the time, and which we demand on our side all the time, which I demanded of the Clinton administration, and I demand of the Bush administration.

I think the Senator is being very unfair by trying to imply that I deliberately kept Enrique Moreno, who may be all of these wonderful things, and I assume that he is—I cannot recall all those details. I have respect for him; I have tremendous respect for him. I would like to have seen him have a chance, had there been consultation. But I do respect the home State Senators, and I think I respect the Democrat home State Senators, too.

I have not even talked about the withholding of blue slips because that was not the issue. The issue was consultation and, in this case, there was zero, ''nada'' consultation.

Mr. DURBIN. Will the Senator yield for another question?

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. Wait a minute, I feel I have been unfairly attacked by the Senator, by someone who knows the process and I think ought to be fair and I think normally is.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. No. Look, as chairman, I can only do certain things. I will tell you this, I put through, as ranking member or chairman, 377 Clinton judges, the second most judges confirmed for a President in history. The highest confirmed happened to be through President Reagan, and there were 382, 5 more. I believe that I would have put through even more than President Reagan or President Clinton had it not been for Democrat holds on the floor against other Democrat nominees.

Let me go further because—let's be fair about it—President Reagan had 6 years of his own party in control of the Senate, in the Senate Judiciary Committee to help him get those 382 judges. President Clinton had 6 years of the opposition party, and yet we gave him virtually the same number as the all-time champion, President Reagan.

Mr. DURBIN. Will the Senator yield?

Mr. HATCH. I think my record shows I have not only been fair, I have bent over backwards. I will acknowledge that I have had problems on my side, just like your chairman when he was chairman, Senator LEAHY, had problems on his side with some who have always wanted to manipulate the system a little bit differently. But I was fair, and I do resent anybody implying that I was not fair.

In the case of Enrique Moreno, he would have had hearings had there been consultation, which I am sure the distinguished Senator from Illinois would be the first to raise if he was not consulted with regard to judges coming from his State.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. DURBIN. I would like to ask the Senator from Utah this question: He has raised the issue of fairness when it comes to Hispanic nominees.

Mr. HATCH. That is right, and I wanted fairness when you asked questions.

Mr. DURBIN. Let me finish the question.

Mr. HATCH. Well, finish it then.

Mr. DURBIN. The Senator suggested it was fair for two Republican Senators from Texas to block a man like Enrique Moreno from even having a hearing because that was their right.

Mr. HATCH. Is there a question there?

Mr. DURBIN. The question is coming. Is it not the right of Senators to raise questions on the floor about Miguel Estrada? Why is that unfair while the treatment of Enrique Moreno was fair? He did not even have a hearing. Miguel Estrada had a hearing, an opportunity to answer questions, and he refused to answer the questions. How is this fair to Enrique Moreno and unfair to Miguel Estrada?

Mr. HATCH. I will tell you again. How many times do I have to repeat it for somebody who has been on the Judiciary Committee and ought to know? If there was not consultation, you would be the first to say: I am not going to let that person go. Or you would be the first to criticize the administration.

The PRESIDING OFFICER. The Senator is reminded not to say ''you'' in the first person.

Mr. HATCH. Let me say this to the Chair. I have answered it about three times now. Let's be fair about it. As chairman, I cannot do everything. All I can do is abide by the rules of the committee, which are that there has to be consultation, not phony requests for consultation. You have to at least consult. They did not even consult.

I wrote a letter to the then-counsel, bless his departed soul, Chuck Ruff, for whom I happened to care a great deal, and there are very great reasons I do. He was a great lawyer, and I got along well with him. I said: You did not consult and they did not. He basically admitted it. Those two Senators were well within their rights to say: We are not going to have him if we are not going to get consultation. And they were within their rights.

As chairman, I had no choice other than to do that. I think the Senator knows that. That is why I believe the questions are very unfair to me.

Now, I will admit, Miguel Estrada was given a hearing by the Democrats. Senator SCHUMER presided over it, and there was more than one Democratic Senator present. It was a fair hearing. I believe it was. It went from about 10 in the morning to 5:30 at night, longer than most hearings. They asked every question they wanted to ask.

I assumed the Democrats believed they were going to win the election and therefore they would never have to have Miguel Estrada come up for a vote any time. When we won the election, suddenly I got a request for confidential documents of the Solicitor General. I should say the White House got that request the day before the hearing. He has had a hearing. He has had a vote in committee. He has come out of the committee.

He is now on the floor, and now we find this situation where for the first time in history, a circuit court of appeals nominee is being denied a right to an up-or-down vote. That is abysmal. And he just happens to be the first Hispanic nominee to the Circuit Court of Appeals for the District of Columbia. I think it is wrong. I think it is unfair. I think it is unfair to the President. It is unfair to him. It is unfair to the Senate. It is unfair to the Senate Judiciary Committee. It is unfair, I think, to the whole process.

Mr. DURBIN. Will the Senator yield for a question?

Mr. HATCH. Without losing my right to the floor.

Mr. DURBIN. I ask this question in relation to Richard Paez, and I will not go to the question of the cloture vote necessary to bring him to the floor, but I ask the then-chairman of the Senate Judiciary Committee if it was fair to Richard Paez, nominated by the President, to the Ninth Circuit, well-qualified by the ABA, to have waited 3 years and then to have faced a motion to proceed on the floor which the Senator from Utah and a majority of the Republicans voted against after this man had waited for 3 years for a vote? Was that fair to Richard Paez?

Mr. HATCH. There were plenty of reasons Richard Paez was held up by people on our side. He had ruled in a number of cases in ways that appeared to be, and I think was, in fact, activist judging. Without my support, Richard Paez would not be sitting on the Ninth Circuit Court of Appeals. So, again, I feel impugned by the question because without me going to bat for him, which I did, without me fighting for him on the floor, which I did, without me giving him a vote, which I did—which you are not; I should say the Democratic side is not—he would not be sitting on the Ninth Circuit Court of Appeals, and he knows it and you know it—every Democrat on the other side knows it.

Unfortunately, I want to talk personally to my colleagues. I will do it

through the mechanism of the Chair. But the fact is, had I not supported him, he did not have a chance to be on the court because there were many people who believed he was an activist judge and, I have to confess, it was a close question.

I finally asked him to come visit with me. I sat down with him. He is a nice man. He is a good man. I have to admit, I felt he was an activist judge. But I also felt he was a good man.

Mr. DURBIN. Will the Senator from Utah yield for a question?

Mr. HATCH. Let me just finish. I told him I would support him, and I did. Unlike this particular situation, he got his vote and he passed with my support, which would never have happened without it.

Mr. DURBIN. Will the Senator yield for one final question? I promise I will not ask any further questions.

Mr. HATCH. Without losing my right to the floor.

Mr. DURBIN. In the case of Richard Paez, a Hispanic nominee who waited over 4 years for a vote, was there ever a time when Richard Paez refused to answer questions you posed to him?

Mr. HATCH. Not that I know of.

Mr. DURBIN. Was he evasive to you or did he try to in any way conceal his true background and true record? Was there ever an instance of that?

Mr. HATCH. I have to say we did not try to destroy the man. We did not try to ask questions that were improper. We did not try to ask him his opinions on how he was going to vote, all of which was done with Miguel Estrada, and he refused to answer those kind of questions, as he should have, as anybody who reads Lloyd Cutler would agree he should have.

I refer you to the President's letter which I am going to get to in a minute, if my colleagues will allow me to, because I want to make a statement before we finish this evening. In all honesty, Miguel has not been treated very fairly and he is certainly not being treated fairly by a filibuster—or should I say the ''filibustero''?—on the floor of the Senate.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, with respect to the Paez and Berzon matters, I ask the chairman if he remembers I was one who questioned those nominees and he made a decision in both of those cases to support them after serious thought was given to it?

Mr. HATCH. That is correct.

Mr. SESSIONS. Is it not a fact the Republican majority leader, TRENT LOTT, was the one who moved for cloture on Paez and Berzon?

Mr. HATCH. No question about it.

Mr. SESSIONS. The vote was 86 to 14, and 85 to 13 to invoke cloture, and I supported cloture even though I opposed the nominees?

Mr. HATCH. That is correct. I have to say our side was fair to Mr. Paez in the end. Admittedly, I wish it did not have to be delayed that long, but in all honesty he was treated fairly in the end. I wish it had been earlier, but I have to say I had my own qualms and my own questions and there were plenty of reasons for that. There were people all over California who did not want him on the Ninth Circuit Court of Appeals, which is considered one of the most activist courts in the country, because of the ''activist'' decisions he was making in contradistinction to what California law really was. Prior to each and every cloture vote in the past which has been mentioned, the Senators in the leadership on our side agreed to provide enough votes to invoke cloture before the cloture petitions were even filed on these Democrat nominees.

I wish my colleagues on the other side would agree to that precedent in relation to the cloture votes they keep referring to. Would they assure us, as we did them, that their side will provide enough votes to invoke cloture before we even file a cloture petition for Estrada? That is what we did for Judge Paez and now Judge Berzon.

So there was no real filibuster. You cannot call that a filibuster. We provided the necessary votes for them to get votes on the floor, and they did get their votes up or down. That is something Miguel Estrada is being denied right now.

Where is the fairness? I do not see any fairness in that. Why should he be denied the same privileges we gave to two people most every Republican disagreed with, but nevertheless gave them a vote and they are now both sitting on the Ninth Circuit Court of Appeals?

I have to tell you I had much angst and many upset stomachs that occurred because of these two nominees, but I voted for both. Without me, neither of them would have made the Ninth Circuit Court of Appeals. It is just that simple.

Mr. SESSIONS. Mr. President, to follow up on that question, I felt strongly about those nominees. I did not dislike them personally, but I felt Paez and Berzon were activists. In fact, their writings clearly indicated that.

Is it not a fact both Paez and Berzon, in separate opinions, have declared the longstanding ''three strikes you're out'' law in California unconstitutional? And I think one of them has been reversed already by the Supreme Court more than once?

Mr. HATCH. That is my recollection. And I have to say there are those who believe at least one, if not both, are activists on the Ninth Circuit Court of Appeals, which is virtually reversed every time by the Supreme Court. It is the most reversed court of appeals in the country.

Mr. SCHUMER addressed the Chair.

The PRESIDING OFFICER. Will the Senator yield for a question?

Mr. SCHUMER. I would like to ask my friend from Utah a question.

Mr. HATCH. Sure, without losing my right to floor.

Mr. SCHUMER. My friend from Utah just characterized the kinds of questions, such as what are your opinions of court cases, in an attempt to destroy the career of Mr. Estrada. I would like to ask the Senator, you were just talking about Judge Paez with Senator SESSIONS. I ask the Senator, my friend from Utah, if you recall some of the questions Senator SESSIONS asked Richard Paez: In your opinion, what is the greatest Supreme Court decision in American history? What is the worst Supreme Court case?

I would ask my colleague two questions. Was Senator SESSIONS attempting to destroy the career of Richard Paez? Second, does he recall that instead of saying, I cannot answer that, Senator Paez gave answers to both of those questions?

Mr. HATCH. Do you mean Judge Paez?

Mr. SCHUMER. Now Judge Paez.

Mr. HATCH. I believe it is within the power of each Senator on the Judiciary Committee to ask any question they want to, no matter how stupid they may be, and we have had plenty of stupid questions from both sides, to be honest with you.

I do not think those are stupid questions. Nor did I think the Senator's questions when he basically asked Miguel Estrada this question, can you think of any cases in the last 40 years with which you disagree with the Supreme Court, nor do I find fault with Mr. Estrada saying, no, I do not. You and I might. I could think of some cases where we have passed laws. I was the cosponsor of the Violence Against Women Act. I did not like to see it overturned. On the other hand, I do understand why it was and I do think it was a legitimate decision even though I may have disagreed with it at the time.

Mr. SCHUMER. Will the Senator yield for another question?

Mr. HATCH. Without losing my right to the floor.

Mr. SCHUMER. I am glad to see we are not destroying careers by asking those kinds of questions.

Mr. HATCH. The only way we are destroying careers, in all fairness, is by having filibusters, not by having up-or-down votes. If we distort the record of people, I think that—I think both sides have done that from time to time, I am not saying deliberately, but nevertheless there have been some times where I think the Senate has not acted in the best form.

Mr. SCHUMER. Will the Senator yield for a question?

Mr. HATCH. Yes, without losing my right to the floor.

Mr. SCHUMER. I was pursuing this line of questioning before, and then somehow we turned to other people to ask questions. But when I asked my colleague before how he could say this about Judge Barkett, which is a reasonable thing for him to say—I do not

begrudge him one bit. I do not think he has an ounce of discrimination in his body—how that was not anti-Hispanic, but opposing Judge Estrada was anti-Hispanic, he prefaced his remarks by saying, well, you are opposing not Hispanics but conservative Hispanics; you are anti-conservative Hispanics—was my friend from Utah being anti-liberal Hispanic when he opposed Judge Barkett or was he simply ignoring the fact that she was Hispanic—he said he did not even know—and instead opposing her on her views and her record, something at least to this Senator is not only legitimate but an obligation to know about the views and the record? So I would like to—

The PRESIDING OFFICER. The Senator is reminded to address the Senator through the Chair and in the third person.

Mr. SCHUMER. I thank the Chair.

So, Mr. President, I ask my colleague, the Senator from Utah, how one is any different from the other. And isn't, as it seems to most of us, one the mirror image of the other, either exactly blasphemous or equally pure?

Mr. HATCH. I believe the Senators can ask any questions they want. Like I say, no matter how dumb or stupid or intelligent or alert they are—I have seen both. In the case of Rosemary Barkett, I confess I never knew she was Hispanic. And even if I did, it would be irrelevant to me. Nor have I accused any Democrat of being prejudiced against Miguel Estrada because he is Hispanic. I do not believe that. I do not believe there is a prejudiced bone over there. I do not believe there is over here either. But I have said I believe our colleagues on the other side are filibustering because Miguel Estrada is a Hispanic Republican conservative nominated by President Bush, a Republican President.

I have also said I believe one of the reasons why there is such a vicious fight to stop him from going on the Court of Appeals for the District of Columbia is because my colleagues on the other side believe he is conservative, and believe he might tip the balance of the court. That is what we get when we get a President. That is what we get when we vote.

If my colleagues on the other side disagree with Miguel Estrada, you have every right to vote against him. I think you shouldn't. There is no reason at all. I don't see one substantive reason so far, advanced by the minority, why he shouldn't sit on the court. Certainly, the fact he has no judicial experience in the eyes of the Democrats, that is not a valid reason.

Since we are talking about things I may have said about Clinton nominees, I have been in on hundreds, if not thousands, of judges since I have been in the Senate. Let me remind the Senator from New York what I said prior to the cloture vote on one Clinton nominee. I said: I personally do not want to filibuster Federal judges. The President won the election. He ought to have the right to appoint the judges he wants. I believe that with every fiber of my being. I think that is what you get when you get a President.

I didn't think most of President Clinton's judges—I would not have appointed most of them if I were President, but I was not President. And I submit I don't believe the distinguished Senator from New York would probably nominate the same judges as President Bush, but President Bush deserves the courtesy of having his judges voted up and down, and that is a courtesy not being granted for the first time in history.

When the minority mentions some cloture votes, we have no majority to make sure it is invoked. There was no filibuster to make sure the nominees get a vote up and down. I would be happy if my friends on the other side would do the same for this fine nominee, even if you disagree, and then vote no as some colleagues did. I voted yes on some of the most controversial judges because I start with the premise that the President deserves support, whoever the President is, as long as the nominee is qualified.

As much as I disagreed with Marsha Berzon, she was very qualified. She was one of the top labor lawyers in the country. I admit, some of my colleagues did not feel the same way as I did. I led the fight to put her on the bench. She personally came to me and thanked me, as did Judge Paez.

I would like to see the same fair treatment to Miguel Estrada. I don't see it here. I think I made a pretty good case it is not here and there is nothing fair about this process.

Mr. SCHUMER. If my colleague from Utah will yield for a final question.

Mr. HATCH. Without losing my right to the floor.

Mr. SCHUMER. One judge nominated to the same DC Circuit Court of Appeals, Mr. SNYDER—a fine judge, well respected, the highest ABA rating, same thing as Miguel Estrada in a lot of ways—never got a hearing, he never got a vote. He is from DC. There were no home State Senators to object to him, unlike Mr. Moreno.

I ask my colleague, why wasn't it very unfair not to let Mr. SNYDER have a vote on the very same circuit to which we are debating Miguel Estrada's entrance?

Mr. HATCH. I cannot answer that other than to say I wish we could have. He was not named for the 11th seat on the Circuit Court of Appeals for the District of Columbia, in contrast to Mr. Estrada who was nominated for the ninth seat. There is a real difference because there was a question whether the 11th and 12th seats at that time should have been filled. But the ninth seat certainly should be filled, and everyone I know agrees with that, including people on the Democrat side.

I wish I could have gotten them all through, to be honest. To also be honest, I don't know of an end of session where any Judiciary Committee has been able to get them all through. Frankly, I think you can go back in time and find more nominees left hanging when the Democrats controlled the committee at the end of the first Bush administration than we left at the end of the Clinton administration. You could go through all the statistics and criticize all you want and some criticisms are justified.

I wish we could have done a better job back then when I was on the Judiciary Committee. I give an illustration. Tomorrow we have a markup on three circuit court of appeals nominees. Some have indicated the Democrats will filibuster the markup. One person on that markup is Mr. Roberts, who has been sitting there for 11 years. Mr. Paez sat there for 4 years, but he got a vote and he is now sitting on the Ninth Circuit Court of Appeals. Mr. Roberts has been sitting there for 11 years and has had three nominations by two different Presidents and is considered one of the two greatest appellate lawyers in the country by Supreme Court Justices and many others. There is not anything you can find against him other than he is appointed by President Bush, a Republican President, and he may be conservative. I don't know whether he is or is not, but he has been held up for 11 years through three nominations.

I have been informed that there may be a filibuster in committee tomorrow. That would be the first filibuster that I have seen in my 27 years on the Judiciary Committee. If that is true—I cannot believe it is true. I believe my colleagues would allow votes and allow them to come to the floor in an orderly fashion. I have to say that I hope that is not true. If that is true, then I think any reasonable person can conclude that my colleagues on the other side are not willing to do their constitutional duty to fill the courts with the President's nominees.

I will stay here all night and debate my record with the Senator from New York or anyone else, but this has nothing to do with the——

Mr. SCHUMER. Will the Senator yield?

Mr. HATCH. I am answering a question.

The PRESIDING OFFICER. The Senator from Utah has the floor.

Mr. HATCH. I will stay all night to debate my record in comparison to any Democratic record. That has nothing to do with whether or not Miguel Estrada should be confirmed. The only thing that has to do with is whether we vote. And I think it would be very unfair not to vote up or down on Miguel Estrada.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from New York.

Mr. SCHUMER. I ask my final question. I have so many but I know the hour is late.

Mr. HATCH. I add one last thing on that. I cannot see any reason for this action against Miguel Estrada unless,

of course, the opposition to Mr. Estrada, based upon what I have been hearing tonight, is really retribution for perceived past wrongs perpetrated against Clinton nominees when I was, in fact, one of the best assets you had in getting nominees through. I took a lot of criticism from the conservative right who I told to get lost, I have to say, in contrast to what I think is the liberal left who seem to have lockjaw control over my colleagues on the other side.

I yield for a question as long as I don't lose my right to the floor.

Mr. SCHUMER. The final question in relation to the hearing tomorrow, would the chairman of the committee, the Senator from Utah, just give us 1 day of questions for Mr. Roberts? As the Senator well knows, we had an unprecedented three court of appeals nominees before us in 1 day—all three controversial, all three very erudite. We never had that before. We took all day.

To his credit, our chairman waited until 9:30 but that is when the questions finished with Mr. Sutton and one of the reasons many Members find difficulty voting on Judge Roberts, who is a brilliant man. I would just like to ask some questions. We have not had a chance to ask questions.

I ask my colleague, if you give us 1 day of hearings on Judge Roberts, we would agree to vote the very next day. Would that be acceptable to the Senator?

Mr. HATCH. Of course not. Because we had a full day of hearings. Mr. Roberts was there, Mr. Sutton was there, Justice Cook was there. We went from 9:30 that morning to 9:30 at night, and I was prepared to stay all night if I had to. Any Senator could have come and asked any questions they wanted. Many Senators asked all the questions they wanted to at that time. Afterwards we kept the record open for Senators to read and review the record and submit any written questions that they wanted. We have had 2 weeks to do that.

There comes a time when you have to say let's treat these people fairly.

I know there is no reason in the world to hold up Mr. Roberts or the other two either. The fact that my colleagues spend all their time—not all their time but enough of their time interrogating Mr. Sutton, they still interrogated Mr. Roberts and Justice Cook. I think we should proceed and I think it is fair to proceed. I think the Senator said it right when he said he is a distinguished appellate lawyer, one of the best in the history of the country. I don't see any reason for the delays in these matters.

I was open, as I have always been, to any questions that the Senators from the other side wanted to ask. We stayed there for a very lengthy hearing.

Look, fair is fair. Let's treat these people fairly.

I hope my colleagues will not filibuster tomorrow because that will be the first time I recall a filibuster in the committee. If that is so, then it is clear that we have the politics of mass obstruction—which politics were suggested by two very ultraliberal law professors at a Democrat retreat in 2001. If that is true, then this is all part of the game, to slow down everything in the judiciary no matter how many emergencies we have, and we have plenty, and to stop President Bush from having his judges confirmed.

I don't think it is fair. I don't think anybody else who watches it thinks it is fair. I call upon my good friends to be fair.

I have to say, I like everybody in this body. I care for everybody in this body. I care for my friend from New York and he knows it. I know he cares for me. But it is time to wrap it up and say, look, you have had your shot. And knowing you, you always take your shot. I should not be talking to you personally, I acknowledge to the Chair. My friend from New York is not known for shyness, but he is known as a fair person and he is known as a good lawyer, at least by me. I am asking him to help be a leader on that committee. I am asking the distinguished Senator from New York and others to be leaders on this committee, to help us do our job, to help fill these courts.

Yes, you may not like him. My colleagues on the other side might not like the nominees of President Bush any more than we liked the nominees of President Clinton. But I put them through. Like I say, President Clinton, he would have been the all-time champion in confirmation had it not been for Democratic holds on your side. So I think we were fair. I would like you to be fair to our people.

If there are no further questions, I would like to make a statement.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I ask the Senator to yield for one question.

Mr. HATCH. Without losing my right to the floor.

Mr. SESSIONS. I say to the Senator, I know in the heat of this debate some on the other side have seemingly questioned the fairness of your leadership. I know they have not had the opportunity to be in Republican conference when you have been absolutely consistent with the views you expressed here on the floor to the Republicans who may have had different views. Would you share with us what you have advised Republicans in meetings about the impropriety of filibusters and how you have been consistent in that and other issues that arise on matters here today?

Mr. HATCH. I thank my colleague for asking that question because everybody knows, including my friends on the other side, that I argued vociferously against the few who wanted to filibuster on our side.

I expect my colleagues in good faith to argue on their side against that. It is a dangerous thing to do. It is a wretched thing to do, filibuster a judge. It is the first time in history. If they want to filibuster some judges, why would they pick on the first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia, a man who suffers from a disability yet rose to the top of his profession. He came up the hard way. He fulfilled the American dream, a man who is an example to every young Hispanic person in this country, and to me. He is an example to me, and I think everybody in this body.

Why wouldn't we let this fellow have an up-or-down vote like we always did? We always made sure that, regardless of the reason for a cloture vote, we made sure that cloture was invoked and a vote up or down occurred.

I have to say, I think there is an element of unfairness here that I have not seen in my 27 years in the Senate. It is a shame that it is happening against the first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia, who has not had a glove laid on him. And because they can't find anything wrong, they want to go on fishing expeditions long after they held their hearing, and then try to justify this holdup and this filibuster for those reasons. It is unbelievable to me.

Look, I made this point before and I am going to make it one more time and I hope everybody in America watches this. The Senate Democrats held a retreat. They can't deny this. It has been reported thoroughly. They were given suggestions by at least two very liberal law professors. Once President Bush became elected, these law professors, wanting to promote only their ideology, suggested that, No. 1, bottle up the nominees in committee. If we have a filibuster tomorrow, they are fulfilling that part of their suggestions of mass obstruction.

We have a filibuster now here on the floor, but I will get to that. Then they said: If you can't bottle them up in committee, then inject ideology into the confirmation process, and that is exactly what has happened. Some of the Senators on the other side have demanded to know the ideology of the nominees, as if that is relevant. And every nominee, and especially Miguel Estrada, if you read his answers to questions, has said we will abide by prior precedent. We will observe the principle of stare decisis. We will rule in accordance with the law and with the rule of law. So there is no reason to inject ideology because they said they would put their own personal beliefs aside. Miguel Estrada said that on numerous occasions in response to questions by the Democrats.

If they can't win on injecting ideology, and we are seeing that at every step of the way here now, then seek all unpublished opinions. I will never forget Dennis Shedd. He was chief of staff to Senator Thurmond on this committee, one of the nicest people we have ever had work on this committee.

I would compare him to Ron Klain, two really nice guys, two really smart guys, two really decent people, two wonderful attorneys. Ron Klain was Al Gore's top aide, and at the time I believe he worked on the Judiciary Committee. I can't remember which Senator he worked for at the time, but he went throughout the whole campaign with Al Gore. He was one of his top advisers. He is one of the top lawyers in this city and he is a personal friend. I admire him.

But when they couldn't get Judge Shedd in any other way, they requested all his unpublished opinions. He has been serving for over 10 years. Where are those unpublished opinions? Published opinions are where the judge writes an opinion and it becomes published and printed in some law book. Unpublished opinions are stored in repositories. To get 10 years of unpublished opinions took thousands and thousands of hours, an estimated $75,000. They had to go to Atlanta, as I recall, to do this, all for the purposes of a fishing expedition, hoping to find just something to hang on Dennis Shedd, who is a well-respected Federal district court judge. That is the kind of crap they had to go through.

I understand one of these professors at that infamous retreat will be here tomorrow to speak to the Democrats and possibly continue to misguide them.

Then they said if bottling him up in committee doesn't fully work—of course it will work for a while, which we may see tomorrow if they filibuster these judges, inserting ideology into the confirmation process. If that doesn't work then, if they are judges, seek all unpublished opinions and see if you can find something to pin on them to defeat them. If that doesn't work, then do this: Seek privileged internal memoranda, which they are trying to do in this case without one ounce of justification, to try and get into the actual memoranda written by Miguel Estrada in his job, in his duty as an Assistant Solicitor in the United States Solicitor General's Office, in three areas: his recommendations on appeal, his recommendations on certiaria, and his recommendations on amicus curae matters. Never in the history of the Justice Department has the Solicitor General's Office ever been willing to give up those privileged documents; and they shouldn't. It is the phoniest, most unjustified request that I have seen in a long time, and I have seen a lot of phony, unjustified requests.

If all of that doesn't work—if bottling up doesn't work, injecting ideology, seeking all unpublished opinions, and if you can't get privileged, unpublished memoranda, then these law professors said to filibuster—for the first time in the history of the country, filibuster.

That is what we are going through right now. Isn't it a crime—well, maybe that is too harsh. Isn't it a shame and even despicable that they are filibustering the first Hispanic nominee for the Circuit Court of Appeals for the District of Columbia who has lived the American dream, who has the highest rating possible unanimously—and it is their gold standard—of the American Bar Association.

It is absolutely amazing that we are going through this. We have now been doing it for over a week. You would think this is a Supreme Court nominee. Of course, that is part of this. The whole purpose of giving Miguel Estrada a rough time is to say, Mr. Estrada, we don't want your kind on the Supreme Court.

That is really what the bottom line is here. That is why these professors are doing that—because this President has nominated some of the greatest lawyers in the history of the country on the circuit court of appeals. And every one of them has to be considered ultimately for the Supreme Court.

But this is a shot across the bow right now—that you had better darned well conform to a particular ideology or you are just not going to make it.

I hope our colleagues, those with clear minds and fair attitudes, will prevail on that side, as we had to prevail on this side against filibustering. If they don't, ''Katie bar the door,'' because I am not sure I will be around next time to stop the filibusters—not to say that I am all that important. But the fact is, I did stop them the last time. There were only a few who wanted to do that. The vast majority of the Republicans said that would be awful, and I think the vast majority of Democrats ought to say the same. I think they ought to wake up and realize what they are doing. It is wrong. It is not fair to this President. I admit many of them do not like this President, but he is the President. It is unfair to the Judiciary Committee who voted this man out of committee. It is unfair to the process, which has always had an up-or-down vote once the person has been brought up on the floor. It is unfair to Miguel Estrada.

I think I have said all that I care to say this evening.

I yield the floor.

Mr. WARNER. Mr. President, I rise today in support of the nomination of Miguel Estrada, who has been nominated by our President to serve on the United States Court of Appeals for the District of Columbia Circuit.

Article II, Section 2 of the Constitution provides the President with the authority to nominate, with the ''Advice and Consent of the Senate,'' individuals to serve as judges on the Federal courts. Thus, the Constitution provides a role for both the President and the Senate in this process. The President has the power to nominate, and the Senate has the power to render ''Advice and Consent'' on the nomination.

Article II, Section 2 of the Constitution places the composition of our Judiciary entirely in the hands of the President and the Senate. Therefore, in order for our Judiciary to effectively administer justice, it is incumbent upon the ability of the Executive and the Legislative branches of Government to work together.

Throughout the quarter century I have had the honor of representing the Commonwealth of Virginia in the United States Senate, I have conscientiously made the effort to work on judicial nominations with the Presidents with whom I have served. Whether our President was President Carter, President Reagan, President Bush, President Clinton, or President George W. Bush, I have accorded equal weight to the nominations of all Presidents, irrespective of party.

Based on the last several years, I am concerned that we as a body are no longer according equal weight to the nominations of our Presidents irrespective of party. The process has become highly politicized and, as a result, we are ultimately discouraging highly qualified nominees from serving in our Judiciary.

If we as a Senate continue to let partisanship remain the hallmark of the Senate's judicial confirmation process, and we hold up judicial nominees based on their party affiliation, then our judiciary will suffer.

Throughout my 25 years in the United States Senate, I have always carefully scrutinized judicial nominees and considered a number of factors before casting my vote to confirm or reject.

The nominee's character, professional career, experience, integrity, and temperament are all important factors. In addition, I consider whether the nominee is likely to interpret law according to precedent or impose his or her own views. The opinions of the officials from the State in which the nominee would serve and the views of my fellow Virginians are also important. In addition, I believe our Judiciary should reflect the broad diversity of the citizens in serves.

These principles have served well as I have scrutinized the records of over a thousand judicial nominees. One most recent instance that is important for us to remember is my support for the nomination of Judge Gregory to serve on the United States Court of Appeals for the Fourth Circuit.

Judge Gregory was first nominated by President Clinton and subsequently nominated by President Bush. Regardless of which President nominated Judge Gregory, the fact is that he was highly qualified for the federal bench. Therefore, I supported his nomination when President Clinton nominated him late in the 106th Congress, and when President Bush nominated him early in the 107th Congress. Judge Gregory is now the first African American Judge to ever serve on the United States Court of Appeals for the Fourth Circuit, and he is serving with distinction.

Judge Gregory's qualifications were clear-cut. Regardless of which President nominated him, he deserved the support of the United States Senate.

The same is true with the nomination of Miguel Estrada.

Mr. Estrada has received a unanimous ranking of ''Well Qualified'' by the American Bar Association. And, in my view, his record indicates that he will serve as an excellent jurist.

Mr. Estrada's resume is an impressive one. Born in Honduras, Miguel Estrada came to the United States at the age of 17. At the time, he was able to speak only a little English. But just 5 years after he came to the United States, he graduated from Columbia College with Phi Beta Kappa honors.

Three years after he graduated from Columbia, Mr. Estrada graduated from Harvard Law School where he was an editor of the Harvard Law Review.

Mr. Estrada then went on to serve as a law clerk to a Judge on the United States Court of Appeals for the 2nd Circuit and as a law clerk to Judge Kennedy on the United States Supreme Court.

After his clerkships, Mr. Estrada worked as an Assistant United States Attorney, as an assistant to the Solicitor General in the Department of Justice, and in private practice for two prestigious law firms.

Throughout his career, Mr. Estrada has prosecuted numerous cases before Federal district courts and Federal appeals courts, and he has argued 15 cases before the United States Supreme Court.

Without a doubt, Mr. Estrada's legal credentials make him well qualified for the position to which he was nominated. I am thankful for his willingness to resume his public service, and I am confident that he would serve as an excellent jurist.

Mr. President, Miguel Estrada's nomination is a clear-cut case. I urge the Senate to confirm his nomination.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I know the audience has dwindled since this phase of this debate started at 9 o'clock. I apologize to the Presiding Officer and to the staff that has been here for 2 workdays already today. But it would certainly be unfair to the people who we represent on this side of the aisle for me not to say a few words to counteract and rebut the statements they have made for 3 hours.

First, I like President Bush. I certainly disagree with what my friend from Utah has said—that people over here dislike the President. I don't know if that is the case. President Bush is one of the most likable people I have ever met. I don't agree with a significant number of policies that he has enunciated, but that has nothing to do with disliking President Bush. This debate has everything to do with our constitutional prerogative under article II, section 2, of the Constitution that requires Senators to review the judicial nominations sent to us by the President of the United States. We have a right, we have an obligation to do that.

I will talk about a number of issues, but the first thing I want to talk about is the fact that cloture or filibusters on judicial nominations are well-established precedents; they have been long-established in this body and are appropriate in the context of Senate's Constitutional responsibility to advise and consent. There is no question that the use of filibusters has increased in recent years.

The Congressional Research Service reports that filibuster and cloture are used much more regularly today than at any time in the Senate's past. Approximately two-thirds of all identifiable Senate filibusters have occurred since 1970. Cloture was sought most frequently on nominations in the 103rd Congress; that is, in 1993–1994 when the House and the Senate were controlled by the Democrats, and the Republicans used the filibuster and cloture as the tool of the minority. In that Congress, cloture was sought on 12 nominations—judicial and otherwise, and invoked in only 4.

Cloture votes on judicial nominees are well precedented in recent history. Both Democrats and Republicans have sought cloture in response to debate on judicial nominations since the cloture rule extended to nominations in 1949. Cloture was not sought on the nominations until 1968 because prior to that concerns over nominations were resolved, or the nominee was defeated behind closed doors.

Since that time, all Senators who have served in this body have recognized that things have changed a great deal since 1968. There were very few votes, period, in the Senate in those early days. Now we have hundreds of votes in every session. From 1968 to 2000, there were 17 cloture attempts on judicial nominees. Of the 17 cloture attempts on judicial nominations, in 6 of them the Democrats were in the majority and in 7 of them the Republicans were in the majority. Of the 17 cloture attempts, 2 involved nominees to the U.S. district courts, 8 involved nominees to the U.S. court of appeals, and 3 involved nominations to U.S. Supreme Court.

Opposition to judicial nominations have been based on objections to judicial philosophy of the nominee, concerns that the nominee would treat all parties fairly on procedural grounds, and, in this instance, I might add, for lack of having information on the nomination given us by the President.

There is ample precedent for filibustering judicial nominations. Based on cloture votes, there have been, as I have stated, 17 filibusters on judicial nominations. Often there is extended debate on the nomination.

For example, the nomination of Clement Haynesworth to the U.S. Supreme Court was defeated after lengthy debate—7 days of debate. The nomination of G. Harrold Carswell to the U.S. Supreme Court was defeated after 12 days of debate in 1970. The nomination of Robert Bork to the U.S. Supreme Court in 1987 was defeated after 8 days of debate.

So when the majority says that filibuster on judicial nominations is without precedent, ask them about the filibuster led by Senator Thurmond—recently retired—in 1968 on the nomination of Justice Abe Fortas to be Chief Justice of the United States. Ask the majority about the filibuster in 1994 on the nominations, as we have heard tonight, on Barkett and Sarokin. Ask them about the nomination of Berzon, and Paez to the Ninth Circuit, and the scores of other judicial nominations that were held up by using extreme delaying tactics when the Republicans were in charge.

I stated earlier that of the 79 Clinton judicial nominations not confirmed in the first Congress, there were 31 circuit and 48 district court nominees. Fifty-nine of these were never allowed a vote by the Republican-controlled Senate—59 out of the 31 circuit and 48 district court judges. Out of the 79 judges, 59 of them weren't even allowed a vote. The Republicans didn't have to worry about a filibuster. They simply didn't bring up President Clinton's nominees.

As I have indicated, being more specific, 31 circuit court nominees and 22 were blocked from getting the vote and being confirmed. And I read into the RECORD all the names of the district court judges who simply were blocked from getting a vote and were not confirmed. I also read into the RECORD circuit court nominees who were not given an opportunity to be voted on, and certainly were not confirmed.

Now, it was the Framers' intent that we do exactly what we are doing now. And there have been a number of writings on that. It is very important we understand that what is being done here does not happen very often, but it does happen, Mr. President.

I personally—other than this right here—have been involved in only one other filibuster involved in nuclear waste. I am told that I hold the record as a first-year Senator for the longest filibuster in the history of the country. So I know what a filibuster is. Most Senators have never been involved in a filibuster. We have one here.

Why? Because we are in an area where we really do believe that the person who is being asked—Miguel Estrada—to be confirmed as a member of the DC Circuit is a person from whom we are entitled to get some information.

As I said to the majority leader, personally, and I have said publicly, there are only a few things that can be done in the procedural posture of which the Senate is now engaged. These are not in order of priority: No. 1, pull the nomination. No. 2, the leader or anyone can get a petition signed for cloture and try to invoke cloture. Or it would seem to me the other thing that we could do is have this man, who said he does not care, prevail upon the President to say: Give them those memos I wrote while I worked at the Solicitor

General's Office. It has been done before, he should say. It has been done with Chief Justice Rehnquist. Senator LEAHY has the stack of those memos provided in Rehnquist's case. He wanted to become Chief Justice, Judge Rehnquist did. We said: We want to see those records, those solicitor general memoranda. We got them. We reviewed those. It has been done in other cases. So there is certainly precedent for that. Similarly we should be privy to Mr. Estrada's memoranda; Mr. Estrada should answer our questions.

I know my friend, the distinguished Senator from Utah, has stated: I have a book here with all the answers to these questions.

Well, earlier today, I compared Miguel Estrada's answers to the questions to a series of answers my grandson gave to questions my son asked him. He just turned 3 years old. And I will repeat it.

We have a home in Nevada. It is new. It is in Searchlight, NV. We have some new furniture in our new home. And we had my grandchildren and some of my boys there. And my little grandson, Wyatt, wrote on one of the couches with a pen. So his dad was upset, and he began to interrogate his son, my grandson.

He said: Did you do this? And little Wyatt said: No. So my son, becoming more concentrated in his interrogation of this 3-year-old boy, said: Well, who did it, then? And my 3-year-old grandson said: I don't remember his name.

Well, that is like the answers we have gotten from Miguel Estrada. They are answers that I compare to my grandson's answers. Sure, he said something. My grandson gave an answer. And if you printed that out in a book, it would fill up a sentence or so. And Miguel Estrada has filled up a book answering questions by not answering.

When we were in the majority, we could have stopped a lot of judges. We have heard people over here asking their questions to the distinguished chairman of the committee: Is this retribution? Is this vengeance? Well, we said, when we took over control of the Senate, that, in fact, if we wanted to really be mean spirited and treat the Republicans like they treated us, we could have stonewalled the appointment of judges. We said we would not do that. And our record stands: 100 judges in a period of 17 months. And just this past Monday we voted unanimously for three additional judges.

And we will vote for a lot more.

We believe this man, Mr. Estrada, has some serious problems. We believe we have a few questions we want Miguel Estrada to answer. As I have stated, Miguel Estrada's answers to the Judiciary Committee's questions are just like on this chart: a big blank. We do not know any more, other than the tone of his voice in what he said, what he knows. With the answers he gave, we do not know anything more than when we started the Judiciary Committee hearing.

And if we want to talk a little bit about his legal philosophy, I think it is important because my friend, the distinguished chairman of the committee, said he wanted to know about—I cannot remember all the names, Marsha Berzon, Richard Paez, all the names he mentioned—he wanted to know if they were judicial activists, wanted to know their judicial philosophy. And he said, with a couple of them, they were judicial activists. He said he knew that, but he felt—for example, for Paez, Senator HATCH is absolutely right, he interceded with Richard Paez and was able to help get that nomination through. No question. Senator HATCH made a very valid, honest statement. But even then, he knew in his mind what the judicial philosophy of Richard Paez was.

We do not know what Miguel Estrada's legal philosophy is. We do not know. For example, a question by Senator DURBIN, a Senator from Illinois, asked: Give us an idea of some Supreme Court opinions with which you disagree. He had no opinion.

And as we talked about earlier today, I wonder if some people who have not been to law school, maybe have taken a course in constitutional law in undergraduate school—and if you are a lawyer like he is—couldn't you dig up maybe the Dred Scott decision that said slavery was legal and constitutional? I don't think he agrees with that. Couldn't he have let us know?

Here is Miguel Estrada's legal philosophy: a big blank. To say he has represented clients as a private lawyer is no answer, provides little insight into his philosophy.

As I said earlier today, I have been to trial lots of times. I have tried cases before courts over 100 times, presented the client's case to a jury. And a jury had to arrive at a decision based on how I conducted that case. But after having reviewed every case that I tried, there would be no way of determining what my judicial philosophy is because every time I went to court, I was representing somebody charged with murder, or someone who was charged with robbery, or I was representing someone who was trying to get money as a result of a wrongful eviction from an apartment house, on and on with all the different cases that I tried. From that, no one would know what my judicial philosophy would be because I was representing individuals in cases.

So to say, Estrada has argued cases, why don't you look at the cases he argued? That has nothing to do with his judicial philosophy. We want answers to questions, as we got answers to questions from the 100 judges Democrats moved through this body when we were in the majority, and the three who were just approved, confirmed with us in the minority.

So we are entitled to know what Miguel Estrada's legal opinions are. You see, the reason we are making such a big deal about trying to get these memoranda from his work at the Solicitor General's Office is that it may give us some idea how he stands on legal issues.

He won't tell us, so maybe we can find out from reviewing some of the papers he has written while he was employed. That is why we are concerned. We are concerned because we honestly believe we have a constitutional obligation to review this man's records.

Let me just say there has been a lot of talk tonight. There are TV ads running as we speak. By the way, these TV ads are being paid for by an organization, the ''Committee for Justice'', that was founded by the man who gave Miguel Estrada the rating from the American Bar Association, Fred Fielding. Mr. Fielding is the one who started this group, and he is running ads against us. That is an interesting proposition. At the ABA, the person who reviewed and interviewed Miguel Estrada, gave his recommendation to the ABA—and they accepted what he told them—is a person who formed this committee that is running ads against us. They are running all over the country.

It seems to me the ABA has a slight problem. According to their manual:

> No member of the Committee shall participate in the work of the Committee if such participation will rise to the appearance of impropriety or would otherwise be incompatible with the purposes served and functions performed by the Committee.

The ABA better review this procedure they have, make sure their reviewers comply with it.

What these ads Mr. Fielding is running are saying, among other things, is that we are anti-Hispanic. That's the rhetoric of my friends on the other side of the aisle.

We have been accused by one Senator of sending the message ''if you are a minority and a conservative, we hate you.'' The distinguished chairman of the committee said: ''Hispanics face a new obstacle from Democrats who would smear anyone who would be a positive role model for Hispanics.''

I am disturbed by the hyperbole, the rhetoric being used to propel the nomination of Miguel Estrada to one of the most powerful courts in the United States, the DC Circuit. I am at a loss to understand it as anything other than an attempt to silence Senators who today seek to exercise their constitutional duty to decide whether this judicial nominee merits support.

Let no one within the sound of this Senator's voice be mistaken: We are not going to be intimidated from fulfilling this constitutional role.

We know these statements about Democrats are false. The Hispanic community, the American people, and my colleagues know the truth: The Democratic party has put the vast majority of Hispanic appellate court judges on the bench. This is the first Hispanic circuit court nomination we have ever received from the President. This is the first one, Miguel Estrada.

As important as our record on Hispanic judges, the Democratic party is

the champion of issues of importance to the Hispanic community, from fair labor practices to immigration to protection of civil rights.

To recount our record: Of the 10 Latino appellate court judges who are now serving, 80 percent were appointed by Democrats. Several of these nominees were denied Senate consideration for years, while the Republicans controlled the Senate. Judge Paez, we have heard about that. Thirty-nine Republicans voted against his nomination. Judge Sonia Sotomayor, nominated to the Second Circuit, was similarly stalled. Her confirmation took 433 days. Twenty-nine Republicans voted against her confirmation.

And then there were the Hispanic nominees who were denied hearings or even votes by Senate Republicans during the Clinton administration: Jorge Rangel, Enrique Moreno, Christine Arguello, Ricardo Morado, Annabelle Rodriguez. These facts and these names bear witness to the false claims made by my colleagues on the other side of the aisle.

Despite these facts, Democrats don't believe that turnabout is fair play. Where President Bush has sent the Senate open and direct nominees, those nominees have won swift confirmation in the Democratic-controlled Senate. President Bush has nominated eight Hispanic Americans to the Federal district courts, four have been swiftly confirmed: Judge Christina Armijo, Judge Philip Martinez, Randy Crane, Jose Martinez.

This anti-Hispanic rhetoric is a red herring.

Mr. Estrada's background has nothing to do with my concerns. The red herring nature of this debate is belied by the fact that leading Latino groups don't support Estrada. They include the Congressional Hispanic Caucus; the Puerto Rican Defense and Education Fund; the Mexican American Legal Defense and Education Fund; the National Association of Latino Elected & Appointed Officials; the National Council of La Raza; National Puerto Rican Coalition; Puerto Rican Defense and Education Fund, California La Raza Lawyers.

These groups are joined by scores of others in opposition to Estrada, including the Leadership Conference on Civil Rights, the Alliance for Justice, the National Organization for Women, the National Association for the Advancement of Colored People, People for the American Way.

These groups are all dedicated to assuring equal opportunity in America, protection of minority rights, and advancement of the public interest. They, like many of my colleagues, are deeply concerned by Mr. Estrada's limited record and his unwillingness to engage with the Senate in an open and searching discussion of judicial philosophy and his record.

While we are talking about this, let me say there has been some talk that the Congressional Hispanic Caucus is split. There is some dissension among the ranks, some claim. The 20 members of the Hispanic Caucus are unanimously opposed to the nomination of Miguel Estrada.

A release was issued yesterday where Ciro D. Rodriguez, a Member of Congress from Texas, chairman of that caucus, said:

> It is disheartening to see that Members of the Republican Senate continue to make misleading and unfounded statements regarding the Congressional Hispanic Caucus's opposition to the Bush nominee Miguel Estrada. The [Congressional Hispanic Caucus] will continue to stand by its unanimous opposition to this unqualified nominee and will not waiver.
>
> Senate Republicans continue to hit below the belt, insulting Hispanic Members of this Congress who have been elected to serve as a voice for the people in their community. Today Senate Judiciary Chairman Orrin Hatch continues to make misleading, partisan swipes. He incorrectly claims that the [Congressional Hispanic Caucus] is split in its opposition, and he mischaracterizes our arguments. Yesterday, the [Congressional Hispanic Caucus] released a letter to Senator Hatch demanding an apology for comments he made during Senatorial debate, likening Members of the [Congressional Hispanic Caucus] ''to the lioness eating her cubs.''

They go on to say:

> We have yet to receive an apology or even an acknowledgement from the Senator that his comments were out of line and insulting.
>
> The [caucus] has supported numerous highly qualified Hispanic appointees by the Bush administration. We oppose Mr. Estrada based on our review of his inadequate qualifications for what is viewed as the second most powerful court in the Nation.

There has been a lot of talk about LULAC being so widely in favor of Miguel Estrada. Mario G. Obledo, who is a recipient of the Presidential Medal of Freedom Award, past national President of LULAC, cofounder of the Southwest Voter Registration and Education Project, first general counsel and past president of MALDEF, cofounder of the Hispanic National Bar Association, founder of the National Coalition of Hispanic Organizations, opposes the confirmation of Miguel Estrada.

He says, among other things:

> I write to join other Latino civil rights organizations in opposing the confirmation of Miguel Estrada to the D.C. Circuit Court of Appeals. My history in the Latino civil rights community is lengthy. I am a past National President of LULAC, a co-founder of the Southwest Voter Registration and Education Project, the first General Counsel and later President of MALDEF, as well as a cofounder of the Hispanic National Bar Association. I am a recipient of the President Medal of Freedom Award, this nation's highest civilian honor in recognition of my involvement with civil rights. I have been an attorney for 43 years, and a former member of the faculty of Harvard Law School. I was formerly the Secretary of Health and Welfare for the State of California. I am the founder and President of the National Coalition of Hispanic Organizations. I mention some of my past and current work in the Latino community so that there is an understanding of how intertwined my life has been and still is with the betterment of my community.

My opposition to Miguel Estrada's confirmation is based upon the following. First, I believe that Mr. Estrada showed himself unwilling to allow the Senate to fully evaluate his record. He was less than candid in his responses. Yet, Mr. Estrada, as every other nominee who is a candidate for a lifelong appointment, must be prepared to fully answer basic questions, particularly where, as here, there is no prior judicial record and no legal scholarly work since law school to scrutinize. He declined to give full answer to many of the questions posed to him by the Senate Judiciary Committee. When he did give answers, those answers raised troubling doubts concerning his ability to be fair.

There are serious questions raised by his sparse record on basic civil rights and constitutional matters. It is unclear that Mr. Estrada would recognize that the First Amendment protects the rights of Latino youth to congregate and associate on public streets. It is also likely that Mr. Estrada would not place proper limits on law enforcement as required by the Fourth Amendment. Given his views of enumerated rights, there are serious questions whether he would recognize a suspect's right not to make incriminating statements. His record leads me to conclude that he would not take seriously and fairly Latino allegations of racial profiling by law enforcement. Based on his actions in pro bono litigation, there is a question whether he believes that organizations which have long represented the interests of communities would have the right to represent those interests in court. In addition, his views concerning the continued viability of affirmative action programs are also suspect.

Given these concerns, I oppose the confirmation of Mr. Miguel Estrada.

Finally, I am dismayed and disturbed with the tone that has been adopted by some of Mr. Estrada's most vocal supporters. Instead of focusing on the merits, they have resorted to name-calling and insults. If they cannot obtain sufficient support for Mr. Estrada on the merits alone and can only gain it by falsely accusing Senators of being anti-Hispanic or accusing Latino organizations who oppose him of ''selling out'' their people, then it does make one wonder whether Mr. Estrada deserves the life-term appointment after all. There are some brilliant lawyers who cannot serve as fair and impartial jurists. I now conclude that Mr. Estrada may be a very talented lawyer but he cannot serve as a fair and impartial jurist. His nomination should be defeated.

Mr. President, we also have a letter dated today, from the League of the United Latin American Citizens, LULAC, addressed to Senators DASCHLE and HATCH. Among other things, this letter goes on to say that the LULAC organization supports Miguel Estrada. But the second paragraph says:

> We are extremely disappointed that his nomination became mired in controversy. That said, we are alarmed by suggestions by some of the backers of Mr. Estrada that the Senate Democrats and members of the Congressional Hispanic Caucus are opposed to the nomination because of race, ethnicity, and Hispanic bias. We do not subscribe to this view at all, and we do not wish to be associated with such accusations.

I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

LEAGUE OF UNITED
LATIN AMERICAN CITIZENS,
Washington, DC, February 12, 2003.

Hon. ORRIN G. HATCH,
Washington, DC.
Hon. THOMAS DASCHLE,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR HATCH AND SENATOR DASCHLE: As you are aware, the League of United Latin American Citizens, has taken a position in support of Miguel Estrada for the D.C. Circuit Court of Appeals based upon our review of his qualifications and legal record. We believe that he is an extremely well qualified nominee with an outstanding legal record that demonstrates his knowledge of the law, his solid judicial temperament, and his ability to set aside any personal beliefs he may have and make sound legal arguments based on the constitution and precedent.

We are extremely disappointed that his nomination has become mired in controversy. That said, we are alarmed by suggestions from some of the backers of Mr. Estrada that the Senate Democrats and the members of the Congressional Hispanic Caucus are opposing his nomination because of his race, ethnicity or an anti-Hispanic bias. We do not subscribe to this view at all and we do not wish to be associated with such accusations.

LULAC has had a long and productive working relationship with many Senate Democrats and all of the members of the Congressional Hispanic Caucus and our experience is that they would never oppose any nominee because of his or her race or ethnicity. On the contrary, it is most often the Democratic members of the Senate who support LULAC's priority issues and score highest on the National Hispanic Leadership Agenda's congressional scorecard which LULAC helps to compile. Nine times out of ten it is the Congressional Hispanic Caucus that is the champion or our legislative priorities as outlined in the enclosed LULAC legislative platform.

Nevertheless, the under representation of Hispanics in the Federal judiciary is of great concern to our organization and we have consistently encouraged both Democratic and Republican Presidents to appoint more Hispanics to the Federal courts. Hispanics, however, remain severely underrepresented in the judiciary comprising only 3.8% of federal judges while making up 14% of the US population.

Consequently, we do not support the attempts of either party to prevent qualified, fair-minded, Hispanic nominations from moving forward for a timely confirmation vote. While we clearly believe that the filibuster of Miguel Estrada is unfair, we also believe that the delay of many of President Clinton's Hispanic nominees including Richard Paez, Enrique Moreno and Sonia Sotomayor were unfair. It would be in the best interest of both Democratic and Republican Senators to encourage more Hispanic nominations to the federal courts and to avoid embroiling these nominees in the partisan disputes that prevent the consideration of these candidates based on their merits.

Sincerely,

HECTOR M. FLORES,
LULAC National President.

Mr. REID. This letter goes on to say they have had a longstanding relationship with us, the Democrats; and basically it goes on to say that they support Latino nominees for courts. They want more.

Mr. President, we have heard statements here that we don't need these memoranda Mr. Estrada wrote when he was in the Solicitor General's office; other people have not had to give them, so why should he? Other people have turned these memos over is the short answer. Another answer is that Mr. Estrada—going to why it's so important here—is that he has virtually no other record for us to examine. The other side of the aisle, my colleagues, have called the request for these memos unprecedented. Senator LEAHY produced a number of actual Solicitor General memos turned over in the past.

We have heard a lot about Mr. Paez and about Marsha Berzon. Let me take them as an example. This woman was asked to produce the minutes of meetings she attended when she was a member of the ACLU, American Civil Liberties Union. My colleagues went further and even required Ms. Berzon to supply the minutes of the meetings of the ACLU while she was a member even if she didn't attend the meetings.

We don't want to go nearly that far. We want to find out what is in the memoranda. It is not unprecedented. My friends have said these documents are privileged. Everybody in this body knows that the attorney-client privilege doesn't apply to the Senate. In the 15-page letter that the President's lawyer, Mr. Gonzalez, wrote back to the Senate today—actually to Senators LEAHY and DASCHLE in response to our request to produce these memoranda—even Mr. Gonzalez recognizes that these are not privileged. Both the House and the Senate have explicitly rejected calls to incorporate that privilege into our rules. A judgment has already been made that to do so would impede our ability to do our work, and would impede it certainly with this nomination.

My friends on the other side of the aisle have implied that our requests are dangerous. I don't believe that. They have implied it would cripple the Solicitor General's office if these memoranda were released. The office functioned just fine after we got the information from Bork and Rehnquist. The Solicitor General's office survived just fine. We knew when we asked for that information before that it was on a very limited basis and it would only apply to them and not to everybody.

The administration claims that these documents—it reminds me of some other documents that this administration has tried to hide. I remember the Vice President and his National Energy Policy Development Group. We wanted to know if the Vice President met frequently with the oil companies in formulating the nation's energy policy. They went to court to stop that.

I would simply say here that what we are asking for is certainly fair and we should get it. It would be the right thing to do.

If the President and those on the other side of the aisle think so much of this man, it seems that is a very light step to take: to answer the questions and give reasonable, detailed answers, and not refuse to provide the memos that he wrote in the Solicitor General's office.

They say this is the first true filibuster. That certainly is not the case. There have been a number of filibusters—at least 17 on judges. Republicans have filibustered Democratic nominees. Republicans can call it what they want. Their attempts to invoke cloture walked, talked, and looked like filibusters—they were filibusters. They didn't have the votes to sustain any number of those instances.

There has been talk in the evening that the reason the judge from Texas, Judge Moreno, didn't get a vote is because there was no consultation; it had nothing to do with blue slips, simply with the fact that there was no consultation.

I ask unanimous consent that this letter be printed in the RECORD, dated April 28, 1997, from Charles Ruff, the attorney for President Clinton—like Gonzales is the attorney for President Bush now.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE,
Washington, DC, April 28, 1997.

Hon. ORRIN G. HATCH,
U.S. Senator, Russell Office Building, Washington, DC.

DEAR SENATOR HATCH: Thank you for taking the time to meet with the Attorney General and me.

As I told you, we are making every effort to send forward in the next weeks nominations for the senior positions at the Department of Justice, including Associate Attorney General, and Assistant Attorney General for the Civil Rights and Criminal Divisions, and the Office of Legal Counsel. We share your commitment to fill these critical positions at the earliest possible date and appreciate your willingness to work with us in achieving that goal.

With respect to judicial nominees, we recognize that, although the selection of judges is among the President's most important constitutional duties, senators from both parties have historically played an important role not only through their formal votes on such nominations but by providing their advice before a nomination comes to a vote. We are committed to achieving the fullest possible measure of bipartisan consultation before the President makes his selection of a nominee. As we discussed, the nature of that consultation should be shaped to meet the circumstances in particular states—the interests of the senators involved, the number and type of openings to be filled, and other factors. For example, we met recently with Senators Gramm and Hutchison to discuss their interest in having commissions review the qualifications of candidates, and my staff will be working with theirs to determine how best to implement such a process. Similarly, I understand that Attorney General Edmisten is working with Senators Nickles and Inhofe to develop a bipartisan process for identifying potential District Court candidates. And in Pennsylvania, Senators Specter and Santorum have worked with Congressman Murtha to establish commissions to review the qualifications of interested candidates. In addition to these formal vehicles for consultation, we have met and will continue to meet with Republican senators and their staffs to explore how best to obtain

their input and to ensure that they are advised when the President is preparing to announce a nomination in their state.

I know that you fully appreciate the nature of the President's special prerogatives in this important area, just as we are sensitive to the special role played by the members of the Senate. We are grateful for your leadership and your assistance, and we will be happy to discuss further any specific issues that may arise relating to the nomination process.

Sincerely,

CHARLES F.C. RUFF,
Counsel to the President.

Mr. REID. Mr. President, he says, among other things:

We are committed to achieving the fullest possible measure of bipartisan consultation before the President makes his selection of a nominee. . . .We met recently with Senators Gramm and Hutchison to discuss their interest in having commissions review the qualifications of candidates, and my staff will be working with theirs to determine how best to implement such a process.

So there was consultation.

This President does not abide by the advice and consent clause of the Constitution. Article II, section 2: We have a constitutional obligation to do just what we are doing. Republicans held up scores of Clinton nominations. These nominees were subjected to secret holds, given no hearings or even votes. On two separate occasions today, I have read into the RECORD the names of these people who simply were dumped without even a hearing.

My friends on the other side of the aisle did not make their objections known to the American people. We have in the light of day. They did not raise their objections in the light of day. They never engaged in debate like this because they hid behind secret holds.

Their assertion that holding up Miguel Estrada is anti-American, anti-Hispanic. I hope we have answered that assertion. This charge is simply without foundation. Democratic administrations have placed nearly all the judges who now serve at the appellate court level. The Democrat-controlled Senate expeditiously approved all of President Bush's Hispanic nominees to the Federal district courts.

We have done the very best we could to move forward on judicial nominations, and we have determined it was time to draw the line because we are entitled to more than a blank page.

Miguel Estrada's ABA rating means we should approve him. That is what we are being told. Of course, all should be reminded that the Republicans, when they were in the majority, got rid of the ABA rating. They did not want them to be part of the process. But now because Miguel Estrada got this ABA rating given by Fred Fielding, my colleagues have deemed the ABA the gold seal of approval.

Mr. Estrada did receive a well-qualified rating from the ABA, and he may deserve it, but it just does not look right. I am not here to in any way impugn the legal qualifications of a Harvard law graduate. I didn't graduate from Harvard. It is a fine law school. But let's not brag about this ABA rating, in the manner it was obtained.

While serving on the ABA review committee, Mr. Fielding founded the partisan ''Committee for Justice'' with C. Boyden Gray, another partisan Republican. There is nothing wrong being Republican partisan. It is part of our system. Some of my best friends are Republican partisans. But they should not be involved in giving people ratings at the ABA and then setting up committees and paying for ads—running partisan ads if somebody does not approve their nominee.

The committee is running untrue partisan ads against Democratic Senators in an attempt to keep us from performing our constitutional duty. When Fielding recommended Estrada's well-qualified rating, he was serving on President Bush's transition team and serving as a lawyer for the Republican National Committee. This does not seem quite right to me.

You have to ask yourself, when Americans hear that the ABA rates a nominee well qualified, do they think the President's foot soldiers in the effort to pack the bench play a major role in making that rating? I doubt it.

You have to ask yourself, doesn't Mr. Fielding's dual role—purportedly ''independent'' evaluator and partisan foot soldier—violate the ABA's rules?

''Governing Principles of the Standing Committee on Federal Judiciary, Appendix,'' adopted by the ABA Board of Governors February 1988. I ask unanimous consent that this appendix be printed in the RECORD. It states, among other things:

No member of the Committee shall participate in the work of the Committee if such participation would give rise to the appearance of impropriety or would otherwise be incompatible with the purposes served and functions performed by the Committee.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

APPENDIX: GOVERNING PRINCIPLES OF THE STANDING COMMITTEE ON FEDERAL JUDICIARY

The Standing Committee on Federal Judiciary shall continue to direct its activities to evaluating the professional qualifications of persons being considered for appointment to the federal bench on the basis of predetermined and objective evaluation criteria which shall be provided prior to evaluation to persons whose qualifications are to be evaluated. The Committee will continue, if asked, to provide to the Attorney General and, following nomination, the Senate Judiciary Committee, its appraisal of the professional competence, integrity and judicial temperament of such persons.

In view of the special nature of the function performed by this Committee and the confidence reposed in the Committee's evaluations, the integrity and credibility of its processes and the perception of these processes are of vital importance.

No member of the Committee while serving as a member or within one year following such service, shall seek or accept a nomination to the federal bench.

No member of the Committee shall participate in the work of the Committee if such participation would give rise to the appearance of impropriety or would otherwise be incompatible with the purposes served and functions performed by the Committee.

Because confidentiality and discretion are of critical importance to the evaluation processes of the Committee, only the President of the Association, his designee, or the Chair of the Committee shall respond to any media or general public inquiries or make any statements to the media or general public relating to the work of the Committee.

The President of the Association shall take any action necessary to ensure adherence to these principles.

Mr. REID. Mr. President, Mr. Fielding's work in this so-called well-qualified rating does not meet the smell test. It certainly does not meet the test the ABA adopted.

We have also heard tonight, last night I should say at this point, that there is a vacancy crisis on the Federal bench. Yet when my colleague, Senator HATCH, served as chairman of the Judiciary Committee during the Clinton years, he declared that a vacancy rate of 67 judgeships on the Federal bench was ''full employment'' basically.

My colleagues have also asserted there is a crisis in the DC Circuit, noting there are four vacancies in the DC Circuit. I say to my colleagues, if they were concerned about such a crisis in the DC Circuit, why didn't they fill the vacancies? Do you know why? They said the court had too many judges; they did not need more judges. Even though we had well-qualified people, such as Elena Kagan and Allen Snyder, they said the court had enough judges to do the work they do.

They held them up so they could fill the court—hoping they would take the majority and the White House. They wanted their judges on this important court that rules on civil rights, workers' rights, environmental protections, women's rights, and a number of other issues.

Now suddenly the court that was jammed to the gills, which really did not need more judges, now needs them all.

We are going to help them fill vacancies because we believe the circuit needed the help when we were in the majority, when we had President Clinton as President. But one of those people we are not going to allow to go to the DC Circuit is Miguel Estrada unless we get the information we have requested.

Let me briefly state again that there has been some statement that the Solicitor General's memoranda are privileged. They are not. Senate rules do not incorporate the attorney-client privilege. Both the House and Senate have declined to adopt that privilege as part of their rules because we found it would impede our ability to do our work.

The wisdom of that is revealed in the debate of this nominee. He has written very little besides these memoranda, if anything. I understand he wrote one law review note in law school. My colleagues have opined providing these memoranda would decimate the Solicitor General's Office. As I established,

it did not with the nomination of Bork when we got the information, it did not with Rehnquist when we got the information, it did not with Easterbrook when we got the information, and Civiletti and others.

Mr. President, this is, as Senator HATCH would call it, a true filibuster. They do not happen very often. There have to be strong principles involved, and there are. As I said last night, my friend from Utah can state as many times and in as many different ways he wants that there is not a problem with this nominee, and all I can say is, there is a problem with this nominee.

We, on this side of the aisle, try to be very fair, as does the other side of the aisle. We have a wide-ranging political philosophy on our side of the aisle, and it is not really often—because Democrats are noted for their independence—that we unite in this manner.

We do so here because important principles are at stake, because our constitutional duty is at issue. We do so because a nominee to a life-time seat on the second highest court in the land should engage with us in a forthright manner as he asks for the honor to one day pass judgment on important freedoms enjoyed by the American people.

It is not very often we join together in a cause, but we have joined together in this cause because it is wrong for Miguel Estrada to go rushing on to the DC Court of Appeals with a blank slate, our not knowing what his judicial philosophy is, not knowing what his record is. We want to know what he wrote when he had the opportunity to write memos when he was Assistant Solicitor General, and we want him to answer questions. We are entitled to know that. These are not outlandish requests.

The legal memoranda are a blank sheet of paper. His legal philosophy is a blank sheet of paper. His answers to the Judiciary Committee's questions are a blank piece of paper. We deserve more than that. The Constitution demands more than that.

Let me again apologize to the Chair for taking a few minutes this morning, but I believed it would be a bit of laziness on my part to walk out tonight, after having heard 3 hours of debate by my friend from Utah giving one side of the story, because this has two sides. This debate has two sides. Of course, we believe strongly that on a matter of principle we are right. The Republicans believe they are right. That is what the Senate is all about.

We are doing nothing that is unusual or untoward. That is what the Senate is all about. That is why the Founding Fathers gave the Presiding Officer and me the opportunity to serve, to represent a State. There are two Senators from each State. The small State of New Hampshire, with two Senators, has as much opportunity, right, and power in this body as the two Senators from California with 35 million people in it. That is what the Senate is all about.

In the long term, this debate is going to be extremely important and helpful to the Senate because what it means is Presidents in the future, when they send nominees to go on courts, are going to have to answer a few questions. They cannot send blank slates to become judges.

I apologize to the Chair and to the very tired staff. They have worked long and hard. The Presiding Officer and I will be home asleep, and these folks will still be working to prepare the RECORD and take care of things.

So I apologize to everyone for keeping them late. I know how hard they work and how important each of them really is to the Senate and the institution. I hope we can wrap things up pretty quickly.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Mr. President, I think the Senator from Nevada spoke with his usual eloquence and none of us could tell he was up that early in the morning.

LEGISLATIVE SESSION

Mr. TALENT. Mr. President, I ask unanimous consent that the Senate proceed to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. TALENT. Mr. President, I ask unanimous consent that the Senate proceed to a period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred November 24, 2001, in Cincinnati, OH. Theodore Jenkins, 43, was savagely beaten and stabbed. Jenkins told police that he was attacked by five men who beat him with a nightstick and stabbed him four times in the back. The attackers used racial slurs during the beating, and police investigated the incident as a hate crime.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

JACKIE ROBINSON

Mrs. BOXER. Mr. President, I am proud to join Senators KERRY and MCCAIN in co-sponsoring their bill to award Jackie Robinson the Congressional Gold Medal in recognition of his profound and lasting contributions to the cause of equality and civil rights in America.

Jackie Robinson has always been a hero of mine—initially because he was the greatest of all Brooklyn Dodgers when I was a young Dodger fan growing up six blocks from Ebbets Field, and later because I realized how he had changed America forever and for better.

Jackie Robinson was a peerless athlete who excelled in many sports and changed the way that baseball was played. He helped Brooklyn win five pennants and one unforgettable World Championship, when we no longer had to ''wait till next year.''

Even more important, he was a courageous pioneer who overcame tremendous pressure and prejudice to break the color line in major league baseball. It is hard for us today to imagine the obstacles he faced back in 1947, when our nation's schools, military, and public facilities were all strictly segregated. Overcoming taunts, assaults, and death threats, Jackie Robinson played baseball—and played magnificently. His grace, dignity, determination, and tremendous ability made him a hero to millions of Americans of all races and backgrounds.

Jackie Robinson once said, ''A life is not important except in the impact it has on other lives.'' By this high standard, Jackie Robinson's life had monumental importance. As Senator KERRY pointed out when introducing this bill, Dr. Martin Luther King once said that he could not do what he was doing if Jackie Robinson had not done what he did. As our nation keeps struggling to realize Dr. King's great dream, we can salute Jackie Robinson as one of the fathers of that dream.

I urge all of my colleagues to honor this great American by co-sponsoring and passing this bill to award Jackie Robinson the Congressional Gold Medal.

AMERICAN HEART MONTH

Mr. TALENT. Mr. President, I rise today in recognition of February as American Heart Month. As a strong supporter of the American Heart Association, I want to make clear that prevention of heart disease should be a priority of health care funding. I have always believed that focusing resources on prevention will save lives as well as taxpayers dollars.

Heart disease is the leading cause of death in Missouri and in the United States. Almost 18,000 people in Missouri died of heart disease in 1999.

Many women believe that heart disease is a man's disease, so they fail to perceive it as a serious health threat. Every year since 1984, cardiovascular diseases have claimed the lives of more women than men. And, the gap between male and female deaths continues to grow wider. The national statistics are even more startling. Heart disease is the number one killer of women in the United States, claiming more than 250,000 women per year.

Sadly, an American dies from cardiovascular disease approximately every 33 seconds. More than 61 million Americans—one in five males and females—suffer from heart disease, stroke or another cardiovascular disease. Stroke is the third leading cause of death in Missouri and in the United States. Almost 4,000 people in Missouri died of stroke in 1999. Heart disease, stroke and other cardiovascular diseases claim more lives each year than the next five leading causes of death combined.

We know the causes of cardiovascular disease—one of them is high blood cholesterol. High cholesterol is a leading risk factor for heart disease and stroke. Approximately 42 million Americans have total blood cholesterol levels of 240 milligrams per deciliter and higher. These individuals are considered at high risk for developing coronary heart disease, which leads to heart attack.

I know that something can be done to combat heart disease and save American lives, and that is why I joined Senator DORGAN in cosponsoring of The Medicare Cholesterol Screening Coverage Act of 2003. This legislation adds blood cholesterol screening as a covered benefit for Medicare beneficiaries, at a frequency and in a manner determined by the Secretary of Health and Human Services, (HHS). This is consistent with guidelines issued by the National Heart, Lung, and Blood Institute, which recommend that all Americans over the age of 20 be screened for high cholesterol at least once every five years. Currently, Medicare only covers cholesterol and other lipid testing for patients who already suffer from known disease such as heart disease, stroke, or other disorders associated with elevated cholesterol levels.

This bill also provides flexibility to allow the Secretary of HHS to cover future cardiovascular screening tests that might become the standard of care in the future, so that Medicare can keep pace with changes in medicine. Congress has already acted to cover other screening tests such as bone mass measurement, glaucoma screenings, and screenings for colorectal, prostate, and breast cancer. Now is the time to also extend Medicare coverage for cholesterol screening.

In recognizing February as American Heart Month, I urge my colleagues to act on The Medicare Cholesterol Screening Coverage Act of 2003, and I thank Senator DORGAN for his leadership on this issue. I also urge my colleagues to join me to prioritize legislation to help prevent heart disease.

JOANNE HULS

Ms. STABENOW. Mr. President, I rise today in both sadness and celebration because my longtime staff person friend JoAnne Huls has decided to leave the Senate.

I am sad because I am losing my trusted and valued deputy chief of staff who has been with me for a decade.

I celebrate because I am happy to see a dear friend move on to new challenges and I wish her the best of luck.

JoAnne—a native Michiganian—joined me as a college intern in 1993 when I was in the Michigan Senate.

She has been with me in a number of capacities, including during my tenure in the House of Representatives.

Then JoAnne came with me to the Senate, serving as my scheduler and my deputy chief of staff. She has also been with me through four campaigns, with the usual long hours, tense days and junk food.

All of us appreciate the work our staff does for us. They become like family. We often ask them to work long into the night and into the weekend for salaries far less than they could command in the private sector.

Why do they do it? I think that people like JoAnne Huls come to this institution and work hard every day out of a sense of dedication to their State and country.

And JoAnne also came here out of a sense of loyalty and dedication to me and to the issues we care deeply about.

I will forever be grateful to her for her hard work, commitment and friendship.

So thank you, JoAnne, good luck. I know you will make a difference wherever you are and I know you will continue to care deeply about our democratic process.

We are fortunate that people such as JoAnne Huls are willing to be in public service.

ADDITIONAL STATEMENTS

TRIBUTE TO MAYOR RICHARD C. LEE

● Mr. DODD. Mr. President, I rise today to pay tribute to an outstanding public servant, and a wonderful friend, former New Haven Mayor Richard Lee, who passed away last week at the age of 86.

My most heartfelt condolences go out to his wife, Ellen Griffin Lee, their three children, Sarah, Tara, and David, and the entire Lee family.

I share the grief of so many from my state of Connecticut, and from around the country, who knew Dick Lee as the heart and soul of New Haven, and as a visionary leader who transformed urban politics nationwide.

Mayor Lee will be best remembered as the man whose innovative urban renewal initiatives in the 1950's and 1960's engendered the rebirth of the city of New Haven. His pioneering efforts not only improved the lives of the people of Connecticut, they served as a model for city revitalization projects across America. Generations of Americans have benefitted from the keen mind and passionate public service of Dick Lee.

Born and raised in the working-class Newhallville section of New Haven, Dick Lee never went to college. Nonetheless, he moved swiftly through the ranks of New Haven city government. In 1954, at the age of 37, he became the youngest mayor in New Haven's 365-year history. Despite his youth and lack of formal education, Dick Lee quickly became nationally known as one of the most savvy and sophisticated politicians of his time. He is now remembered as one of the most effective mayors in American history.

Under Mayor Lee's stewardship, New Haven became the recipient of more Federal aid per capita than any other city in the country. He used this influx of Federal resources to create a national blueprint for America's war on poverty, and to showcase innovative urban renewal initiatives, which were desperately needed in hundreds of cities nationwide.

In the early 1960s, Dick Lee launched Head Start, and dozens of equal opportunity and anti-poverty programs in New Haven, long before other cities across America began thinking of ways to combat urban blight and improve the lives of inner-city residents.

John Lindsay, Mayor of New York City, who called Dick Lee the ''dean of mayors in this country,'' once said, ''Sometimes my biggest problem is to develop something in New York that Dick Lee hasn't thought of first.

None of us will ever lose sight of that side of Dick Lee—the tireless visionary, extraordinarily effective leader, and dedicated public servant. But many of us also had the great good fortune to call Dick Lee a personal friend. And he was truly a wonderful friend. My father Thomas Dodd, myself, and the entire Dodd family have known the Lee family for generations. We will always treasure our many memories.

Mr. President, Dick Lee could have done many things with his life—he could have run for governor of Connecticut; he could have run for Congress; he could have taken a Cabinet position.

He chose to stay home—he chose to stay in New Haven. That's because Dick Lee embraced his city of new Haven as a beloved family member whom he could never leave. I speak for many when I say it is nearly impossible to imagine the Elm City without Dick Lee.

Dick Lee ultimately served 16 years as mayor of New Haven, 1954 through 1970, making him the longest serving mayor in the city's history. Through those years, he never lost sight of his

working-class roots; even after emerging as a towering figure in urban politics, he continued to live for many years in his home neighborhood of Newhallville. And he never lost sight of what he believed to be his calling in politics: improving the lives of others. His greatest passion was always reserved for helping the most underprivileged among us.

Dick Lee was often credited with turning new Haven into a ''model city.'' He would never accept that term. He once said, ''I resent the term 'model city' . . . We're not a 'model city' if there is a single man who is unemployed, if there is a single slum home.''

It has been said that the purpose of politics is to generate hope. Dick Lee followed that credo every day, and millions have so benefitted.

There weren't many leaders like Dick Lee back in the 1950's and 1960's, and there aren't many today. He helped improve the lives of so many people and will be greatly missed by so many more.

I would like to submit for the RECORD an extraordinary tribute to Mayor Lee, written by Mark Zaretszky in the New Haven Register, dated February 3, 2003.

The tribute follows.

FORMER MAYOR RICHARD C. LEE REMEMBERED FONDLY

NEW HAVEN.—Former Mayor Richard C. Lee, the longest-serving chief executive in the city's 365-year-history, will be remembered by the city he loved as the man who remade New Haven and, until his own health faltered, never missed a wake.

Lee—friend and adviser to presidents, pioneer of the urban renewal era, outspoken early critic of the Vietnam War and proud Irish American—died Sunday morning after a long bout with heart disease and diabetes. He was 86.

Lee, New Haven's 44th mayor, served a record eight terms from 1954 to 1969. He is survived by his wife, Ellen Griffin Lee, his children Sarah ''Sally'' A. Lee, David Lee and Tara Lee Croke and their families, including grandchildren Stacy, Lindsey and Elliott Lee.

''My youth has fled, but it was a really good life,'' Lee said a week before his death as he lay in bed Jan. 26 at the Whitney Center in Hamden surrounded by family and close friends. ''The memories never disappear . . . No one can take them away from me.''

Mayor Lee had a particularly good day the previous Saturday, according to Ellen Lee, spinning stories and laughing with family and other friends for hours and staying up until 10 p.m.

For part of the day last Sunday he wore a Boston Red Sox cap given to him by the late ''Smokey Joe'' Wood, the New Haven-born star pitcher who was his favorite Red Sox player and Lee's neighbor for many years.

A PASSIONATE MAN

''Dick was a passionate man,'' said Mayor John DeStefano Jr., who visited him several times during his last days. ''He governed passionately, his likes and his dislikes were passionate and I think what animated his personality was his ability to feel emotion.''

DeStefano, the city's 49th mayor, said Lee, who had been an adviser and confidante in DeStefano's nine years as mayor, frequently called him at night to talk about the city's goings-on, give advice when needed and pump him for gossip.

''It's a series of late-night phone calls I'll miss,'' DeStefano said.

What came through even in DeStefano's last visit to Lee ''was this positive attitude,'' he said. ''He was like some Runyonesque character who was a real bookmark of a time and a place in the city.''

''Every day I go to work and I sit at his desk—the very desk that Dick Lee sat at—and I feel blessed . . . ,'' DeStefano said.

''He wasn't perfect. He failed at some things like all of us do. but you don't fail unless you're trying—and Dick was always trying. New Haven is just a blessed place for his service,'' DeStefano said.

YOUNGEST MAYOR

Mayor Lee, who took office on New Year's Day 1954 as the youngest mayor in the city's history, recast New Haven in broad strokes in the 1950s and 1960s—for better and, in the minds of some New Haveners, for worse.

Lee, a World War II Army veteran, defeated Republican incumbent Mayor William Celentano in 1953 to begin a half-century unbroken chain of Democratic rule in New Haven that continues to this day.

He brought in the best planners and social service professionals of the time, listened to what they came up with, dreamed big and made New Haven a ''model city'' watched across the nation.

And while some of the huge changes he brought to the city have not stood the test of time, he was respected—and, more often than not, genuinely liked—even by his critics.

Some have called him the most significant New Haven mayor since its first, Roger Sherman.

''Dick Lee was a tireless visionary, a wonderful friend, and one of the greatest mayors in American history,'' said Sen. Joseph I. Lieberman, D–Conn. ''He loved New Haven and made it a much better city than it would have been without him.''

Lee ''was a mentor and inspiration to me in the early years of my career, and I learned from him that politics means having a vision, building coalitions to get things done, and remembering to enjoy yourself in the process.''

Lieberman, whose house in New Haven for years was just two or three blocks from Lee's, was the 2000 Democratic vice presidential nominee. He is now a candidate for president in 2004.

''I'll never forget our first meeting, when in my capacity as Yale Daily News editor, I interviewed him at the Jewish Center health club, and quickly ended up riding around town with him to see the fruits of his successful urban renewal campaign,'' Lieberman said.

''That was the beginning of a lifelong friendship, and I will miss him tremendously,'' he said.

''Dick Lee is a legend in urban America,'' said U.S. Sen. Edward M. Kennedy, D–Mass. on the occasion of Mayor Lee's last big testimonial dinner in 1998. The senator has known Lee since John F. Kennedy was president and Robert F. Kennedy as attorney general.

During the 1960 presidential campaign, Lee was one of the first U.S. mayors to declare his support for JFK, and was a friend of the Kennedy family for years.

''He's one of the all-time great American mayors, and his eloquent leadership in tackling the challenge of our cities became an inspiration to Congress and the country,'' Kennedy said.

NEWHALLVILLE ROOTS

Lee grew up on Shelton Avenue in the city's working class Newhallville section at a time when it was lit by gaslights, and he continued to live there for several years after he became mayor.

He later moved to McKinley Avenue in the Westville section and stayed there until 2000, when his health forced him to sell his Tudor house and move with his wife to an assisted living apartment complex at Whitney Center.

Lee was a beloved figure to many New Haven, even to some of those who berated him for knocking down their neighborhoods.

By the time Lee became mayor, he had been an alderman and had worked as a reporter for the Journal-Courier, the morning paper owned by the Jackson family that also ran the New Haven Register; for the Chamber of Commerce and as director of the Yale News Bureau.

While Lee never went to college, he was always proud of the fact that Yale University in 1961 gave him an honorary master's degree. He was the first American mayor since New York's Fiorello LaGuardia to receive one and the first New Haven mayor since 1842 to be so honored.

In later years he was one of the Proprietors of the Green and a trustee at Albertus Magnus College. He also worked for the United Way, served as vice president and assistant to the chairman of Union Trust bank and had affiliations with the University of Connecticut and Quinnipiac University.

Julia M. McNamara, the president of Albertus, said Lee's affiliation with the college begun October 1925 when he was one of two altar boys at the opening ceremony of the Dominican facility. He was a trustee at Albertus for 17 years and was trustee emeritus at the time of his death.

''He brought with him all his wonderful experience and background and a tremendous spirit of faith. He was a man of great integrity who really, for us, was an inspiration,'' said McNamara, who became a close personal friend of Lee.

Longtime friend and New Haven Register Editor Emeritus Robert J. Leeney said Lee was totally dedicated to New Haven.

''After a long life of achievement, the significant fact about Dick Lee has been his lasting focus on the New Haven community into which he was born,'' said Leeney, who directed the newspaper's coverage for much of the time Lee was in office. ''His affection and concern for hometown people and places never waned despite his political sophistication and his administrative skills.''

Throughout his career, ''he never worked more than a block or two from the central Green . . .'' Leeney said. ''The rhythm of this city was the rhythm of his life . . . His constant public service and warm personality have made Dick Lee's civic legacy a model of past energy and of future inspiration for the city he loved.''

Lee's wake will take place Tuesday from 3 p.m. to 8 p.m. at Sisk Brothers Funeral Home, 3105 Whitney Ave. in Hamden. A Mass of Christian burial will be celebrated at 10:30 a.m. Wednesday in St. Mary's Church on Hillhouse Avenue.

A NEW BLUEPRINT

Under Mayor Lee, New Haven became a blueprint upon which much of the national war on poverty was modeled.

Lee's New Haven was the recipient of more federal money per capita than any other city in the country during the presidencies of JFK and Lyndon B. Johnson, when a total of $180 million was sent to Elm City.

It was in Dick Lee's New Haven that Head Start, legal assistance and various equal opportunity and anti-poverty were born, beginning was back in 1962, before the rest of the nation knew what those things were.

New Haven was one of six cities to initiate ''human renewal'' programs using Ford

Foundation grants that fostered programs that were precursors to the national ''Model Cities'' legislation.

Lee and his administration, led early on by Development Administrator Edward Logue, also were responsible for huge chunks of the city's modern landscape: the Chapel Square Mall, the Coliseum and the Knights of Columbus building, Dixwell Plaza and the Dixwell Community ''Q'' House, schools, fire houses, a revived Wooster Square and the Long Wharf commercial strip.

But ''I think to focus on the urban renewal projects would be to miss the point of Dick Lee's time as mayor,'' said DeStefano. ''His terms in office spanned a period of time in which the character of America changed.''

''With the suburbanization of America in the 50s and the dramatic social change of the 60s . . . the war, civil rights and the disturbances . . . in the city . . . I think the measure of his mayoralty (was) that Dick Lee kept the city together,'' he said. ''Together in terms of sharing a direction, sharing a vision, creating hope, and from that hope, helping people lead complete lives.''

As a new mayor, Lee assembled New Haven's first ''professional'' government. He listened to the talented people he hired and made New Haven one of the ''model cities'' of the time.

Then, as Lee's time in the mayor's office approached its end amid the tumultuous events of the 1960s, he saw the city's image tarnished when racial unrest erupted in 1967, something that took him by surprise.

As viewed today, Lee's eight terms in office, spanning 16 years from 1954 to 1969, were punctuated by such ironies. They also long ago were inscribed in 20th century political science and urban planning textbooks.

Douglas Rae, a professor of political science at Yale, who has just finished a book critical of some of Lee's legacy, offered no such criticism of Lee the man.

''He is New Haven's finest political creation of the 20th century—a man whose vision and humanity tower above other mayors and other public figures in that long period,'' Rae said. ''The guy was absolutely remarkable.''

HUMAN RENEWAL

''He was a great mayor,'' said former state Treasurer Henry E. ''Hank'' Parker, who came to New Haven from Poughkeepsie, N.Y. in 1957 to be program director for Winchester Community School as part one of Lee's ''human renewal'' programs.

''He opened the door to a city that needed the urban renewal that he indeed pioneered,'' said Parker, who became the first president of the New Haven Black Coalition in 1968 and ran for mayor himself in 1969, the year Lee bowed out. ''Without that, we would have been even further behind.''

Parker made history of his own when he became Connecticut's first black state treasurer in 1974.

What made Lee great?

Parker said Lee managed the tumultuous changes New Haven and all cities were going through in that era ''better than anyone else of this time.'' He used his Community Progress Inc. and other programs to blend together urban and human renewal ''like nobody else,'' Parker said.

Lee ''was meticulous about government,'' Parker said. ''He was willing to bring people into the administration who were smarter than he was'' and listened to what they said.

''It wasn't the buildings'' that made Lee significant, said DeStefano. ''It was the people.''

When Lee started as mayor, ''the African American population was increasing but there was bad housing and old schools. There was discrimination,'' said former Mayor John C. Daniels, who met Lee as a high school student and was later introduced to politics when Lee appointed him to fill a vacancy on the Board of Aldermen.

''He was in the forefront of changing that,'' said Daniels who served as mayor for two terms from 1990 to 1994 and was the first, and still the only, African American to hold the office.

BRING IN THE BEST

Lee made it acceptable for mayors to reach outside of the city to bring in talented people, said former two-term mayor Frank Logue, younger brother of the late Edward Logue, who was Lee's right-hand man before moving on to help remake Boston and New York City.

''He put together energetic and creative people to be the key people in city government,'' Logue said. ''As far as I know, he was the first guy to do that in a serious way . . .''

One of the significant things about Lee is the extent to which even his critics respected him.

''He's really one of New Haven's heroic figures,'' said Vincent J. Scully Jr., Sterling professor emeritus in art history at Yale University.

Scully was one of the people who successfully opposed Lee-era redevelopment plans that would have knocked down the post office and federal court building that now bears Lee's name, the New Haven Free Public Library and Union Station.

But Lee ''was a dedicated man,'' Scully said. ''He really has to be regarded as New Haven's greatest mayor.''

Lee sought advice from the experts of that time and ''got the best advice he could,'' said Scully, a New Haven native. ''I though a lot of it was very much a mistake . . . but that wasn't Lee's fault . . . He did what the experts told him to do . . .

Scully said the reaction to urban renewal spawned a new era for urban planners, led here by former New Haven Preservation Trust director Margaret ''Peggy'' Flynn.

''New Haven became the heart and soul of the New Preservation movement,'' he said.

To many people, Lee was the guy who saved New Haven. To others however, including many of those who lived along Oak Street and Legion avenue, neighborhoods he bulldozed for the never-completed Route 34 connector, he was a pariah.

But, according to one of his former top staffers, former Redevelopment Agency head Harold Grabino, ''the 'wrecked New Haven' stuff is a lot of crap.''

''It's unfortunate that it didn't hold,'' Grabino, now a New York City developer, said of Lee's bold effort to rebuild New Haven. ''But without the attempt that was made, New Haven would have been in far worse shape than it was, a lot earlier.''

Grabino remembers Lee as ''very much a person-to-person politician'' who worked masterfully to try to satisfy New Haven's diverse population and varying ethnic groups.

He also remembers him as a man who, after one particularly grueling day trip to Washington, D.C. to testify before Congress, insisted upon stopping at three wakes on the way home from LaGuardia Airport.

Joel Cogen, legal counsel for the Redevelopment Agency under Lee, said Lee really did believe in working with people in the neighborhoods. ''It was an incipient thing at that time.'' He said the mayor was further hamstrung by the kind of federal money available, which favored demolition over renewal.

OUTLIVED LEGACIES

One of the ironies of Lee's life is how—despite infirmities that had doctors and his family worrying about his health decades before he died—he managed to outlive many of his legacies.

Those included his grandest, most symbolic and most celebrated project, which cleared three downtown blocks—angering dozens of business owners whose properties he acquired—to make room for Macy's, Malley's, the Chapel Square mall and what is now the Omni Hotel.

Since then, the Malley's building was leveled, Macy's closed and most of the merchants in the mall have been sent packing, although a new developer is on the scene with promises of upscale stores.

The three-block project was the largest physical component of Lee's urban renewal programs and many critics have viewed its decline as evidence of failure. Others, including DeStefano and some of Lee's former staffers, say the development served its purpose and now must be redone.

Lee came to terms years ago with the fact that even some of his grandest plans had faded.

''Well, we still have the hotel,'' he laughed, throwing up his arms in a shrug when asked about the state of downtown in 1998.

Lee even managed to outlive some of the huge public works projects intended to be his memorials: the Richard C. Lee High School closed in 1986; the Oak Street/Route 34 connector, which later was named for him, was never finished.

He joked privately at the 1994 dedication of the four block connector as the ''Richard C. Lee Highway'' that it was one of his greatest disappointments. ''Let's just say it's an awfully short highway,'' he said.

Finally, in 1998 the federal government renamed the federal courthouse on Church Street after him—a memorial that is likely to remain standing for some time.

Appropriately, it was a building he once sought to knock down.

Lee recognized the contradictions of his legacy long ago and commented on it in a speech he delivered in 1980 when the U.S. Conference of Mayors gave him a public service award.

''For every failure we recorded, we had more than our share of successes,'' Lee said, referring to his entire generation of mayors, ''and, by God, I'm proud of that era.

''We would dream, and we did; we would try, and we did,'' he said. ''When we failed, we failed magnificently, and, when we succeeded, we succeeded sometime beyond our fondest expectations, and, after all, what's wrong with a record like that?''

He also recognized that even monumental plans have a limited shelf life.

''You know, we were swimming against the tide,'' Lee said, referring to the social and economic forces, led by the federal highway system, that literally took people and commerce out to the suburbs in the second half of the last century.

A LOCAL GUY

While Lee loved New Haven and chose not to move on to higher office, his fame was not just a local phenomenon.

''There were times when Dick Lee could have run for governor. He could have run for senator. He probably could even have taken a Cabinet position,'' said Daniels.

But ''Dick loved being mayor of New Haven,'' said DeStefano. ''It meant the world to him. Except for Ellen and his family, nothing meant more.''

Recognition of Lee's dedication, innovation and leadership—and his role as an urban groundbreaker—cut cleanly across ideological lines and emanated far beyond New Haven.

In 1967, John Lindsay, the Republican mayor of America's largest city, called Lee ''the dean of mayors in this country'' and

said, ''Sometimes, my biggest problem is to develop something in New York that Dick Lee hasn't thought of first.''

Conservative icon William F. Buckley Jr. once kidded that Lee, a liberal Democrat, ''is excellently equipped to act as a mayor, particularly of impoverished cities which desire to mulct (extract) from the federal government funds to reify (make concrete) Mr. Lee's municipal visions.''

A few days after Lee finally let go of City Hall in 1969, the New York Times in an editorial called him ''one of the pioneers of urban renewal'' and declared, ''a significant chapter in American urban history was concluded.''

While New Haven won widespread fame as one of the ''model cities'' of that era, Lee himself rejected that notion.

''I resent the term 'model city,'' he told the New York Post in August 1967, one week after five days of race riots erupted. ''I have avoided it. I've hated it. We're not a model city if there is a single man who is unemployed, if there is a single slum home.''

He told Time magazine soon afterward: ''If New Haven is a model city, then God help urban America.''●

MITCHELL AWARD

● Ms. CANTWELL. Mr. President, I come to the floor today to recognize and congratulate one of the eleven winners of the George J. Mitchell Scholarship, Miss Jasmin Weaver. Jasmin is a student at the University of Washington in Seattle and has been awarded this prestigious scholarship based on her academic excellence, leadership, and community service, Jasmin represents the third award winner from the University of Washington in the last three years.

The George J. Mitchell Scholarship, which is administered by the nonprofit U.S.-Ireland Alliance, was created to build bonds between American and Irish leaders and was named in honor of the respected former leader of this body who played an integral part in the peace process of Ireland. This scholarship allows university students the opportunity to do postgraduate study for a year at a university in Ireland. There were a record number of applicants this year, with nearly 300 students applying here in the United States.

This award has been particularly important for my home State, with three recipients of this award from the University of Washington in the last three years. Last year's award recipient was Matt Alexander and the previous year Dawn Hewett. I would like to personally congratulate all three winners of this award from our State and I know Washington students will continue their legacy of excellence through this award in the future.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

NATIONAL DRUG CONTROL STRATEGY FOR 2003—PM 15

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on the Judiciary:

To the Congress of the United States:

I am pleased to transmit the 2003 National Drug Control Strategy, consistent with the Office of National Drug Control Policy Reauthorization Act of 1998 (12 U.S.C. 1705).

A critical component of our Strategy is to teach young people how to avoid illegal drugs because of the damage drugs can do to their health and future. Our children must learn early that they have a lifelong responsibility to reject illegal drug use and to stay sober. Our young people who avoid drugs will grow up best able to participate in the promise of America.

Yet far too many Americans already use illegal drugs, and most of those whose drug use has progressed—more than five million Americans—do not even realize they need help. While those who suffer from addiction must help themselves, family, friends, and people with drug experiences must do their part to help to heal and to make whole men and women who have been broken by addiction.

We know the drug trade is a business. Drug traffickers are in that business to make money, and this Strategy outlines how we intend to deny them revenue. In short, we intend to make the drug trade unprofitable wherever we can.

Our Strategy is performance-based, and its success will be measured by its results. Those results are our moral obligation to our children. I ask for your continued support in this critical endeavor.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 12, 2003.*

MESSAGE FROM THE HOUSE

At 3:26 p.m., a message from the House of Representatives, delivered by Mr. Niland, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 141. An act to improve the calculation of the Federal subsidy rate with respect to certain small business loans, and for other purposes.

The message also announced that the House has passed the following bills and joint resolution:

H.R. 337. An act to extend certain hydroelectric licenses in the State of Alaska.

H.R. 397. An act to reinstate and extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois.

H.J. Res. 19. A joint resolution recognizing the 92nd birthday of Ronald Reagan.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 22. Concurrent Resolution honoring Czech Republic President Vaclav Havel.

H. Con. Res. 27. Concurrent Resolution condemning the selection of Libya to chair the United Nations Commission on Human Rights, and for other purposes.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 397. An act to reinstate and extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois; to the Committee on Energy and Natural Resources.

The following concurrent resolutions were read, and referred as indicated:

H. Con. Res. 22. Concurrent resolution honoring Czech Republic President Vaclav Havel; to the Committee on Foreign Relations.

H. Con. Res. 27. Concurrent resolution condemning the selection of Libya to chair the United Nations Commission on Human Rights, and for other purposes; to the Committee on Foreign Relations.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1129. A communication from the Administrator, Food Safety and Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Use of Transglutaminase Enzyme and Pork Collagen as Binders in Certain Meat and Poultry Products (01–016DF)'' received on February 10, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1130. A communication from the Administrator, Food Safety and Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Mandatory Inspection of Ratites and Squabs (0583–AC84)'' received on February 10, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1131. A communication from the Administrator, Food Safety and Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Increases in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Year (FY) 2002 (0583–AC89)'' received on February 10, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1132. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Imazamx; Exemption from the Requirement of a Tolerance (FRL 7291–3)'' received on February 10, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1133. A communication from the Congressional Review Coordinator, Animal and

Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Interstate Movement of Gardenia from Hawaii (Doc.No. 01–042–2)'' received on February 10, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1134. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Imported Fire Ant; Additions to Quarantined Areas (Doc. No. 02–114–1)'' received on February 10, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1135. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Fruit and Vegetable from Hawaii (Doc. No. 00–052–2)'' received on February 10, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1136. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Importation of Used Farm Equipment from Regions Affected with Foot and Mouth Disease (Doc. No. 01–037–2)'' received on February 10, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1137. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Karnal Bunt; Restrictions on the Use of Grain Originating in a Regulated Area (Doc. No. 01–118–2)'' received on February 10, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1138. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Regulation to Prevent and Control Air Pollution from Combustion of Refuse (FRL7442–1)'' received on February 10, 2003; to the Committee on Environment and Public Works.

EC–1139. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Interim Final Determination That State has Corrected Rule Deficiencies and Stay and/or Deferral of Sanctions, San Joaquin Valley Unified Air Pollution Control District (FRL 7451–1)'' received on February 10, 2003; to the Committee on Environment and Public Works.

EC–1140. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law, the report of a Violation of the Antideficiency Act at the Naval Facilities Engineering Command, Pacific Division, Pearl Harbor, Hawaii, in the amount of $671,700; to the Committee on Appropriations.

EC–1141. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law, the report of a Violation of the Antideficiency Act at the Naval Facilities Engineering Command, Pacific Division, Pearl Harbor, Hawaii, in the amount of $34,713,000; to the Committee on Appropriations.

EC–1142. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law, the report of a Violation of the Antideficiency Act at Phillips Laboratory, Space and Missile Center, Edwards Air Force Base, California, in the amount of $214,263.35; to the Committee on Appropriations.

EC–1143. A communication from the Under Secretary of Defense, Comptroller, Department of Defense, transmitting, pursuant to law, the report of a Violation of the Antideficiency Act at Phillips Laboratory, Space and Missile Center, Edwards Air Force Base, California, in the amount of $666,000; to the Committee on Appropriations.

EC–1144. A communication from the Assistant Secretary of Defense, Health Affairs, Department of Defense, transmitting, pursuant to law, the TRICARE Program Fiscal Year 2002 Report to Congress; to the Committee on Armed Services.

EC–1145. A communication from the Under Secretary of Defense, Personnel and Readiness, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–1146. A communication from the Chief Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Taxpayer Identification Number (TIN) Matching Program (Rev. Proc. 2003–9)'' receive on February 10, 2003; to the Committee on Finance .

EC–1147. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report relative to international agreements other than treaties entered into by the United States under the Case-Zablocki Act with Canada, United Arab Emirates, and Australia; to the Committee on Foreign Relations.

EC–1148. A communication from the Director, Regulations Policy and Management, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Revision of the Definition of the Term ''No Residue'' in the New Animal Drug Regulations (RIN0910–AC45)'' received on February 10, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–1149. A communication from the Chairman, Board of Governors, Federal Reserve System, transmitting, pursuant to law, the Semiannual Monetary Policy Report, received on February 1, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1150. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determinations 68 FR 1550 (44 CFR Part 67)'' received on February 10, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1151. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Elevation Determinations 68 FR 1543 (44 CFR Part 65)'' received on February 10, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1152. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Changes in Flood Determinations 68 FR 1540 (Doc. No. FEMA–D–7533)'' received on February 10, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1153. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determination 68 FR 1547 (44 CFR Part 67)'' received on February 10, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1154. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Final Flood Elevation Determination 68 FR 1549 (44 CFR Part 67)'' received on February 10, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1155. A communication from the General Counsel, Federal Emergency Management Agency, transmitting, pursuant to law, the report of a rule entitled ''Suspension of Community Eligibility 67 FR 79879 (Doc. No. FEMA–7799)'' received on February 10, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1156. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–614 ''Urban Forest Preservation Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1157. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–613 ''Electronic Recording Procedures Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1158. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–625 ''Rehabilitation Services Program Establishment Temporary Act of 2003'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1159. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–626 ''Prevention of Premature Release of Mentally Incompetent Defendants Temporary Amendment Act of 2003'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1160. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–617 ''Mental Health Civil Commitment Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1161. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–616 ''Tax Clarity and Recorder of Deeds Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1162. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–615 ''Procurement Practices Vendor Payment Authorization Amendment Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1163. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–624 ''Bowling Alley and Billiard Parlor Temporary Act of 2003'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1164. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–623 ''Tax Increment Financing Reauthorization Temporary Act of 2003'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1165. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–622 ''Criminal Code and Miscellaneous Technical Amendments Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1166. A communication from the Chairman of the Council, Council of the District of

Columbia, transmitting, pursuant to law, the report on D.C. Act 14–621 ''Removal from the Permanent System of Highways, a portion of 22nd Street, S.E. and the Dedication of Land for Street Purposes (S.O. 00–89) Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1167. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–620 ''Council Review of the Exclusive Right Agreement for the Redevelopment of the Existing Convention Center Site Amendment Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1168. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–619 ''District Anti-Deficiency Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1169. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–618 ''Energy and Operational efficiency Performance Based Contracting Amendment Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1170. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–627 ''Local, Small and Disadvantaged Business Enterprise Program Temporary Amendment Act of 2003'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1171. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–579 ''Vacant and Abandoned Properties Community Development and Disposition of Certain Scattered Vacant and Abandoned Properties Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1172. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–580 ''Establishment of the Capitol Hill Business Improvement District Amendment Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1173. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–581 ''Closing of a 18.08 Foot Wide Public Alley in Square 4543 S.O. 01–3587 Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs .

EC–1174. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–582 ''Closing of a Drainage alley and Portions of Burns Place, S.E. and C Street, S.E. and the Dedication of Burns Courty, S.E., Bay Lane, S.E. and Cape Drive, S.E. (S.O. 01–2143) Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1175. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–583 ''Closing of Portions of Virginia Avenue, S.E., K Street , S.E., L Street S.E. and 7th Street, S.E. and Transfer of Jurisdiction of Reservations 19 and 124, S .O 02–2677, Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1176. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–585 ''Closing of a Public Alley in Square 484, S.O. 02–601, Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1177. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–586 ''Closing of a Portion of a Public Alley in Square 209, S.O. 02–1019, Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs .

EC–1178. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–588 ''Eastern Avenue Tour Bus Parking Temporary Amendment Act of 2002'' received on February 10, 2003; to the Committee on Governmental Affairs.

EC–1179. A communication from the Chair, Federal Election Commission, transmitting, pursuant to law, the report relative to the Federal Election Commission's internal management control and financial management control systems; to the Committee on Governmental Affairs.

EC–1180. A communication from the Under Secretary and Director, United States Patent and Trademark Office, transmitting, pursuant to law, the Fiscal Year 2002 Management and Inventory Report for the Patent and Trademark Office; to the Committee on Governmental Affairs.

EC–1181. A communication from the Secretary of Veterans Affair, transmitting, pursuant to law, the Annual Performance and Accountability Report Fiscal Year 2002 for the Department of Veterans Affairs; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. NICKLES, without amendment:

S. Res. 56. An original resolution authorizing expenditures by the Committee on the Budget.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. CORZINE:

S. 364. A bill to prohibit the use of taxpayer funds to advocate a position that is inconsistent with existing Supreme Court precedent with respect to the Second Amendment; to the Committee on the Judiciary.

By Mr. BINGAMAN (for himself, Mr. CRAIG, Mrs. LINCOLN, and Mr. COCHRAN):

S. 365. A bill to amend title 23, United States Code, to establish a program to make allocations to States for projects to expand 2-lane highways in rural areas to 4-lane highways; to the Committee on Environment and Public Works.

By Mr. JEFFORDS (for himself, Ms. COLLINS, Mr. LIEBERMAN, Ms. SNOWE, Mr. SCHUMER, Mr. BIDEN, Mrs. BOXER, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. EDWARDS, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. REED, Mr. SARBANES, and Mr. WYDEN):

S. 366. A bill to amend the Clean Air Act to reduce emissions from electric powerplants, and for other purposes; to the Committee on Environment and Public Works.

By Mr. ROCKEFELLER:

S. 367. A bill to amend part A of title IV of the Social Security Act to reauthorize and improve the temporary assistance to needy families program, and for other purposes; to the Committee on Finance.

By Mr. MCCAIN (for himself and Mr. GRAHAM of South Carolina):

S. 368. A bill to amend title XI of the Social Security Act to include additional information in social security account statements; to the Committee on Finance.

By Mr. THOMAS:

S. 369. A bill to amend the Endangered Species Act of 1973 to improve the processes for listing, recovery planning, and delisting, and for other purposes; to the Committee on Environment and Public Works.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 370. A bill to amend the Oil Pollution Act of 1990 to improve provisions concerning the recovery of damages for injuries resulting from oil spills; to the Committee on Environment and Public Works.

By Mr. DEWINE (for himself, Mrs. CLINTON, and Mr. REED):

S. 371. A bill to amend the Public Health Service Act to ensure an adequate supply vaccines; to the Committee on Health, Education, Labor, and Pensions.

By Mr. THOMAS (for himself and Mr. CRAIG):

S. 372. A bill to amend the National Environmental Policy At of 1969 to require that Federal agencies consult with State agencies and county and local governments on environmental impact statements; to the Committee on Environment and Public Works.

By Mr. KENNEDY (for himself, Mr. KERRY, Mr. AKAKA, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. INOUYE, Mr. FEINGOLD, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. REED, and Mr. SARBANES):

S. 373. A bill to amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the medicare program; to the Committee on Finance.

By Mr. BAUCUS (for himself, Mr. BUNNING, Mr. ENZI, Mr. ENSIGN, Mr. CRAPO, Mr. BURNS, Mr. JOHNSON, Mr. BAYH, Mr. COCHRAN, Mr. INHOFE, Mr. ALLEN, Mr. NICKLES, Mr. WARNER, and Mr. MILLER):

S. 374. A bill to amend the Internal Revenue Code of 1986 to repeal the occupational taxes relating to distilled spirits, wine, and beer; to the Committee on Finance.

By Mr. DOMENICI (for himself, Mrs. LINCOLN, Mr. ROCKEFELLER, and Mr. THOMAS):

S. 375. A bill to amend title XVIII of the Social Security Act to establish a minimum geographic cost-of-practice index value for physicians' services furnished under the medicare program of 1; to the Committee on Finance.

By Mr. DURBIN:

S. 376. A bill to amend the Public Health Service Act to promote organ donation and facilitate interstate linkage and 24-hour access to State donor registries, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. LANDRIEU (for herself, Mr. BREAUX, Mr. COCHRAN, Mr. JOHNSON, Mr. NELSON of Florida, Mr. VOINOVICH, Mr. REID, Mr. SANTORUM, Mr. DURBIN, Mr. CHAFEE, Mr. FEINGOLD, Mr. LIEBERMAN, Ms. STABENOW, and Mr. MILLER):

S. 377. A bill to require the Secretary of the Treasury to mint coins in commemoration of the contributions of Dr. Martin Luther King, Jr., to the United States; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DASCHLE (for himself, Mr. BINGAMAN, Mr. CONRAD, Mr. BAUCUS, Mr. JOHNSON, and Mr. KOHL):

S. 378. A bill to recruit and retain more qualified individuals to teach in Tribal Colleges or Universities; to the Committee on Indian Affairs.

By Mr. BINGAMAN (for himself and Mr. THOMAS):

S. 379. A bill to amend title XVIII of the Social Security Act to improve the medicare incentive payment program; to the Committee on Finance.

By Ms. COLLINS (for herself, Mr. CARPER, and Mr. BROWNBACK):

S. 380. A bill to amend chapter 83 of title 5, United States Code, to reform the funding of benefits under the Civil Service Retirement System for employees of the United States Postal Service, and for other purposes; to the Committee on Governmental Affairs.

By Ms. LANDRIEU (for herself, Mr. DEWINE, Ms. STABENOW, Mr. BREAUX, and Ms. COLLINS):

S. 381. A bill to provide the Secretary of Housing and Urban Development the authority to establish programs that serve intergenerational families, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. DORGAN (for himself, Mr. CAMPBELL, Mr. BINGAMAN, Mr. INOUYE, Ms. LANDRIEU, Mr. JOHNSON, Ms. CANTWELL, Mr. WARNER, Mrs. LINCOLN, and Mr. TALENT):

S. 382. A bill to amend title XVIII of the Social Security Act to provide for coverage of cardiovascular screening tests under the medicare program; to the Committee on Finance.

By Ms. STABENOW:

S. 383. A bill to amend the Solid Waste Disposal Act to prohibit the importation of Canadian municipal solid waste without State consent; to the Committee on Environment and Public Works.

By Mr. REID (for himself, Mr. LEVIN, Mr. DURBIN, and Mr. KENNEDY):

S. 384. A bill to amend the Internal Revenue Code of 1986 to prevent corporate expatriation to avoid United States income taxes; to the Committee on Finance.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. SNOWE (for herself and Mr. KERRY):

S. Res. 55. A resolution authorizing expenditures by the Committee on Small Business and Entrepreneurship; to the Committee on Small Business and Entrepreneurship.

By Mr. NICKLES:

S. Res. 56. An original resolution authorizing expenditures by the Committee on the Budget; from the Committee on the Budget; to the Committee on Rules and Administration.

ADDITIONAL COSPONSORS

S. 68

At the request of Mr. INOUYE, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 68, a bill to amend title 38, United States Code, to improve benefits for Filipino veterans of World War II, and for other purposes.

S. 138

At the request of Mr. ROCKEFELLER, the names of the Senator from Illinois (Mr. FITZGERALD), the Senator from New Jersey (Mr. CORZINE) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 138, a bill to temporarily increase the Federal medical assistance percentage for the medicaid program.

S. 215

At the request of Mrs. FEINSTEIN, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 215, a bill to authorize funding assistance for the States for the discharge of homeland security activities by the National Guard.

S. 241

At the request of Ms. SNOWE, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 241, a bill to amend the Coastal Zone Management Act.

S. 251

At the request of Mr. LOTT, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 251, a bill to amend the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in the general fund of the Treasury.

S. 253

At the request of Mr. CAMPBELL, the name of the Senator from Louisiana (Mr. BREAUX) was added as a cosponsor of S. 253, a bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

S. 265

At the request of Mrs. BOXER, the names of the Senator from Nevada (Mr. REID), the Senator from California (Mrs. FEINSTEIN) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 265, a bill to amend the Internal Revenue Code of 1986 to include sports utility vehicles in the limitation on the depreciation of certain luxury automobiles.

S. 272

At the request of Mr. SANTORUM, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 272, a bill to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low income Americans to gain financial security by building assets, and for other purposes.

S. 304

At the request of Mr. DODD, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 304, a bill to amend the Family and Medical Leave Act of 1993 to expand the scope of the Act, and for other purposes.

S. 312

At the request of Mr. ROCKEFELLER, the names of the Senator from Indiana (Mr. LUGAR), the Senator from Maryland (Mr. SARBANES), the Senator from California (Mrs. FEINSTEIN), the Senator from Washington (Ms. CANTWELL) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 312, a bill to amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program.

S. 333

At the request of Mr. BREAUX, the name of the Senator from Illinois (Mr. FITZGERALD) was added as a cosponsor of S. 333, a bill to promote elder justice, and for other purposes.

S. 363

At the request of Ms. MIKULSKI, the names of the Senator from Arkansas (Mrs. LINCOLN), the Senator from Florida (Mr. NELSON) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 363, a bill to amend title II of the Social Security Act to provide that the reductions in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. CON. RES. 4

At the request of Mr. MCCAIN, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. Con. Res. 4, a concurrent resolution welcoming the expression of support of 18 European nations for the enforcement of United Nations Security Council Resolution 1441.

S. RES. 46

At the request of Mr. BINGAMAN, the names of the Senator from Montana (Mr. BAUCUS), the Senator from Washington (Ms. CANTWELL), the Senator from Nebraska (Mr. HAGEL), the Senator from Washington (Mrs. MURRAY) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. Res. 46, a resolution designating March 31, 2003, as ''National Civilian Conservation Corps Day''.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CORZINE:

S. 364. A bill to prohibit the use of taxpayers funds to advocate a position that is inconsistent with existing Supreme Court precedent with respect to the Second Amendment; to the Committee on the Judiciary.

Mr. CORZINE. Mr. President, today I am introducing legislation to prohibit the use of taxpayer funds to advocate a position on the meaning of the Second Amendment that is inconsistent with existing Supreme Court precedent, as expressed in the Supreme Court case of United States v. Miller.

This legislation responds to the Bush Administration's filing of two unprecedented briefs to the United States Supreme Court, which argued that the

Second Amendment establishes an individual right to possess firearms. In taking this position, the Justice Department directly contradicted the well-established precedents of the Supreme Court, as expressed in the seminal case of United States v. Miller. In that 1939 case, the Supreme Court found that the Second Amendment did not establish a private right of individuals to possess firearms, but rather was intended to ensure the effectiveness of groups of citizen-soldiers known at the time as the Militia.

The Court in United States v. Miller explained the historical background to the Second Amendment and issued its ruling clearly and unambiguously. That ruling has never been reversed, and the Court has followed it in every subsequent related case. Similarly, the precedent in United States v. Miller has been followed by every Justice Department over the past several decades, including the Justice Departments of Presidents Ronald Reagan, Richard Nixon and George H.W. Bush.

The meaning of the Second Amendment should not be a partisan issue. In fact, it should not be a political issue. It is a legal and constitutional issue. And the law on this question has been clearly established by the highest court in the land in case after case for a period of many decades.

Unfortunately, instead of following the law, as Attorney General promised to do during his confirmation hearing, the Bush Administration and the Justice Department have used their authority to file briefs as a means of pursuing a partisan political agenda that flies in the face of established Supreme Court precedents. This is wrong. And, in my view, it is a misuse of taxpayer dollars.

Congress should not have to pass a law to ensure that the Executive Branch follows the Constitution, as clearly interpreted by the Supreme Court. Unfortunately, in light of the Bush's Administration's latest actions, Congress must step in. After all, Congress's ultimate power is the power of the purse. And we have a responsibility to use that power, when necessary, to ensure that the Executive Branch complies with constitutional law.

This responsibility flows from Congress's obligation to preserve, protect and defend the Constitution. It also flows from our obligation to ensure that taxpayer dollars are not misused. The American people should not be forced to pay taxes to support an unreasonable interpretation of the Second Amendment that is not only inconsistent with constitutional law, but that threatens to undermine legislation needed to reduce gun violence and to save lives.

In 1998, more than 30,000 Americans died from firearm-related deaths. That is almost as many as the number of Americans who died in the entire Korean War. In my view, there is much that Congress needs to do to reduce these deaths, including enacting reasonable gun safety legislation. Yet if the Bush Administration prevails in its effort to radically revise the Second Amendment, such laws could well be undermined. The end result would be more death and more families losing loved ones to the scourge of gun violence.

I have asked the Congressional Research Service whether there are any constitutional precedents that would bar the Congress from adopting this legislation, and the answer was ''no.'' I also would note that there is precedent for Congress prohibiting the use of taxpayer dollars to advocate positions with which Congress disagrees. For example, Congress for many years prohibited the Justice Department from using appropriated money to overturn certain rules under our antitrust laws. This responded to the filing of a brief in the Supreme Court by the Justice Department urging a revision of its precedents on resale price maintenance, and the legislation effectively blocked the Department from filing similar briefs.

In conclusion, we should not allow taxpayer dollars to be used to misrepresent the meaning of the Second Amendment on behalf of a partisan, political agenda. We should defend the Constitution against such ideological attacks. We should protect taxpayers from being forced to subsidize ideological gambits. And we should ensure that the Constitution is not misused to undermine gun safety legislation that could save the lives of many innocent Americans.

I hope my colleagues will support the bill, and I ask unanimous consent that the text of the legislation be printed in the RECORD, along with some related materials about this matter.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 364

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PROHIBITION ON THE USE OF FUNDS.

No funds appropriated to the Department of Justice or any other agency may be used to file any brief or to otherwise advocate before any judicial or administrative body any position with respect to the meaning of the Second Amendment to the Constitution that is inconsistent with existing Supreme Court precedent, as expressed in United States v. Miller (307 U.S. 174 (1939)).

[From the New York Times, May 12, 2002]

A FAULTY RETHINKING OF THE 2ND AMENDMENT

(By Jack Rakove)

STANFORD, CA.—The Bush administration has found a constitutional right it wants to expand. Attorney General John D. Ashcroft attracted only mild interest a year ago when he told the National Rifle Association, ''The text and original intent of the Second Amendment clearly protect the right of individuals to keep and bear firearms.''

Now, briefs just filed by Solicitor General Theodore Olson in two cases currently being appealed to the Supreme Court indicate that Mr. Ashcroft's personnel opinion has become that of the United States government. This posture represents an astonishing challenge to the long-settled doctrine that the right to bear arms protected by the Second Amendment is closely tied to membership in the militia. It is no secret that controversy about the meaning of the amendment has escalated in recent years. As evidence grew that a significant portion of the American electorate favored the regulation of firearms, the N.R.A. and its allies insisted ever more vehemently that the private right to possess arms is a constitutional absolute. This opinion, once seen as marginal, has become an article of faith on the right, and Republican politicians have in turn had to acknowledge its force.

The two cases under appeal do not offer an ideal test of the administration's new views. One concerns a man charged with violating a federal statute prohibiting individuals under domestic violence restraining orders from carrying guns; the other involves a man convicted of owning machine guns, which is illegal under federal law. In both cases, the defendants cite the Second Amendment as protecting their right to have the firearms. The unsavory facts may explain why Mr. Olson is using these cases as vehicles to announce the administration's constitutional position while urging the Supreme Court not to accept the appeals.

The court last examined this issue in 1939 in United States v. Miller. There it held that the Second Amendment was designed to ensure the effectiveness of the militia, not to guarantee a private right to possess firearms. The Miller case, though it did not fully explore the entire constitutional history, has guided the government's position on firearm issues for the past six decades.

If the court were to take up the two cases on appeal, it is far from clear that the Justice Department's new position would prevail. The plain text of the Second Amendment—''A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed''—does not support the unequivocal view that Mr. Ashcroft and Mr. Olson have put forth. The amendment refers to the right of the people, rather than the individual person of the Fifth Amendment. And the phrase ''keep and bear arms'' is, as most commentators note, a military reference.

Nor do the debates surrounding the adoption of the amendment support the idea that the framers were thinking of an individual right to own arms. The relevant proposals offered by the state ratification conventions of 1787–88 all dealt with the need to preserve the militia as an alternative to a standing army. The only recorded discussion of the amendment in the House of Representatives concerned whether religious dissenters should be compelled to serve in the militia. And in 1789, the Senate deleted one clause explicitly defining the militia as ''composed of the body of the people.'' In excising this phrase, the Senate gave ''militia'' a narrower meaning than it otherwise had, thereby making the Ashcroft interpretation harder to sustain.

Advocates of the individual right respond to these objections in three ways.

They argue, first that when Americans used the word militia, they ordinarily meant the entire adult male population capable of bearing arms. But Article I of the Constitution defines the militia as an institution under the joint regulation of the national and state governments, and the debates of 1787–89 do not demonstrate that the framers believed that the militia should forever by synonymous with the entire population.

A second argument revolves around the definition of ''the people.'' Those on the

N.R.A. side believe ''the people'' means ''all persons.'' But in Article I we also read that the people will elect the House of Representatives—and the determination of who can vote will be left to state law, in just the way that militia service would remain subject to Congressional and state regulation.

The third argument addresses the critical phrase deleted in the Senate. Rather than concede that the Senate knew what it was doing, these commentators contend that the deletion was more a matter of careless editing.

This argument is faulty because legal interpretation generally assumes that lawmakers act with clear purpose. More important, the Senate that made this critical deletion was dominated by Federalists who were skeptical of the milita's performance during the Revolutionary War and opposed to the idea that the future of American defense lay with the militia rather than a regular army. They had sound reasons not to commit the national government to supporting a mass militia, and thus to prefer a phrasing implying that the militia need not embrace the entire adult male population if Congress had good reason to require otherwise. The evidence of text and history makes it very hard to argue for an expansive individual right to keep arms.

There is one striking curiosity to the Bush administration's advancing its position at this time. Advocates of the individual-right interpretation typically argue that an armed populace is the best defense against the tyranny of our own government. And yet the Bush administration seems quite willing to compromise essential civil liberties in the name of security. It is sobering to think that the constitutional right the administration values so highly is the right to bear arms, that peculiar product of an obsolete debate over the danger of standing armies—and this at a time when our standing army is the most powerful the world has known.

[From the Washington Post, May 10, 2002]

GUNS AND JUSTICE

The U.S. Solicitor General has a duty to defend acts of Congress before the Supreme Court. This week, Solicitor General Ted Olson—and by extension his bosses, Attorney General John Ashcroft and President Bush—took a position regarding guns that will undermine that mission.

Historically, the Justice Department has adopted a narrow reading of the Constitution's Second Amendment, which states that ''a well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.'' Along with nearly all courts in the past century, it has read that as protecting only the public's collective right to bear arms in the context of militia service. Now the administration has reversed this view. In a pair of appeals, Mr. Olson contends that ''the Second Amendment more broadly protects the rights of individuals, including persons who are not members of any militia . . . to possess and bear their own firearms.'' Mr. Ashcroft insists the department remains prepared to defend all federal gun laws. Having given away its strongest argument, however, it will be doing so with its hands tied behind its back.

Laws will now be defended not as presumptively valid but as narrow exceptions to a broad constitutional right—one subject, as Mr. Olson put it, only to ''reasonable restrictions designed to prevent possession by unfit persons or to restrict the possession of types of firearms that are particularly suited to criminal misuse.'' This may sound like a common-sense balancing act. But where exactly does the Second Amendment, if it guarantees individual rights, permit ''reasonable restrictions''? And where does its protection exempt firearms that might be well suited for crime?

Mr. Ashcroft has compared the gun ownership right with the First Amendment's protection of speech—which can be limited only in a fashion narrowly tailored to accomplish compelling state interests. If that's the model, most federal gun laws would sooner or later fall. After all, it would not be constitutional to subject someone to a background check before permitting him to worship or to make a political speech. If gun ownership is truly a parallel right, why would the Brady background check be constitutional?

The Justice Department traditionally errs on the other side—arguing for constitutional interpretations that increase congressional flexibility and law enforcement policy options. The great weight of judicial precedent holds that there is no fundamental individual right to own a gun. Staking out a contrary position may help ingratiate the Bush administration to the gun lobby. But it greatly disserves the interests of the United States.

[From the New York Times, May 14, 2002]

AN OMINOUS REVERSAL ON GUN RIGHTS

Using a footnote in a set of Supreme Court briefs, Attorney General John Ashcroft announced a radical shift last week in six decades of government policy toward the rights of Americans to own guns. Burying the change in fine print cannot disguise the ominous implications for law enforcement or Mr. Ashcroft's betrayal of his public duty.

The footnote declares that, contrary to longstanding and bipartisan interpretation of the Second Amendment, the Constitution ''broadly protects the rights of individuals'' to own firearms. This view and the accompanying legal standard Mr. Ashcroft has suggested—equating gun ownership with core free speech rights—could make it extremely difficult for the government to regulate firearms, as it has done for decades. That position comports with Mr. Ashcroft's long-held personal opinion, which he expressed a year ago in a letter to his close allies at the National Rifle Association. But it is a position at odds with both history and the Constitution's text. As the Supreme Court correctly concluded in a 1939 decision that remains the key legal precedent on the subject, the Second Amendment protects only those rights that have ''some reasonable relationship to the preservation of efficiency of a well-regulated militia.'' By not viewing the amendment as a basic, individual right, this decision left room for broad gun ownership regulation. The footnote is also at odds with Mr. Ashcroft's pledge at his confirmation hearing that his personal ideology would not drive Justice Department legal policies.

It is hard to take seriously Mr. Ashcroft's assertion that the Bush administration remains committed to the vigorous defense and enforcement of all federal gun laws. Mr. Ashcroft, after all, is an official whose devotion to the gun lobby extends to granting its request to immediately destroy records of gun purchases amassed in the process of conducting Brady law background checks even though they might be useful for tracking weapons purchases by suspected terrorists.

The immediate effect of the Bush Justice Department's expansive reading of the Second Amendment is to undermine law enforcement by calling into question valuable state and federal gun restrictions on the books, and by handing dangerous criminals a potent new weapon for challenging their convictions. What it all adds up to is a gift to pro-gun extremists, and a shabby deal for everyone else.

By Mr. BINGAMAN (for himself, Mr. CRAIG, Mrs. LINCOLN, and Mr. COCHRAN):

S. 365. A bill to amend title 23, United States Code, to establish a program to make allocations to States for projects to expand 2-lane highways in rural areas to 4-lane highways; to the Committee on Environment and Public Works.

Mr. BINGAMAN. Mr. President, I rise today with my colleague, the distinguished senior Senator from Idaho, Senator CRAIG, to introduce the Rural Four-Lane Highway Safety and Development Act of 2003. We are pleased to be joined by Senators LINCOLN and COCHRAN in sponsoring the bill.

The purpose of this bipartisan legislation is to ensure that States have the resources they need to upgrade major two-lane roads across the Nation to high-quality four-lane divided highways. The goals of this bill are to improve the safety of our most dangerous highways and to stimulate economic development in rural areas.

I think most Senators would agree that the Dwight D. Eisenhower National System of Interstate and Defense Highways is one of the transportation marvels of the 20th century. The system's 46,000 miles of divided highways interconnect virtually every major urban area in the Nation. The system represents one of the most efficient and safest highway systems in the world.

Unfortunately, when the Interstate System was planned, it left many rural communities and smaller urban areas without direct links to the high-quality transportation network that the interstate highways provide. Many of these smaller and rural communities continue to suffer economically because of the lack of high-quality four-lane highways.

To address this issue, in 1995 Congress developed the concept of a National Highway System as a way of extending the benefits of an efficient highway network to all areas of the country. Congress designated the National Highway System to help focus Federal resources on the Nation's most important roads.

Today there are about 160,000 miles on the National Highway System, including all of the interstate highways and all other routes that are important to the Nation's economy, defense, and general mobility. The NHS comprises only 4 percent of the Nation's roads, but carries more than 40 percent of all highway traffic, 75 percent of heavy truck traffic and 90 percent of tourist traffic.

The NHS reaches nearly every part of the Nation. According to the Federal Highway Administration, about 90 percent of America's population lives within 5 miles of an NHS route. All urban areas with a population of more than 50,000, and 93 percent with a population of between 5,000 and 50,000, are within 5 miles of the NHS. Counties with NHS highways have 99 percent of

all jobs, including 99 percent of all manufacturing jobs, 97 percent of mining jobs, and 93 percent of agricultural jobs.

The NHS is the critical transportation link for most of our Nation's rural areas. The Federal Highway Administration estimates that, of the 160,000 miles now on the National Highway System, fully 75 percent, or 119,000 miles, are in rural areas. Of the 1.2 trillion total vehicle miles traveled in 2000 on NHS roads, about 60 percent were in rural areas.

I hope all Senators will agree that improving highway safety should be our top priority. When it comes to highway safety, the fact is that travel on four-lane roads is safer than two-lane roads. This is especially true in rural areas. According to the Bureau of Transportation Statistics, in 1998 the rate of traffic fatalities on all rural roads was 2.39 per 100-million vehicle miles; however, the rate on rural interstate highways was half as high—only 1.23 per 100 million vehicle-miles.

The reason for the lower fatality rate on rural interstate highways should be obvious. When a road has only one lane in each direction, trucks and other slow-moving vehicles increase the hazard of passing. Vehicles turning on or off a two-lane road can also increase risk. A divided four-lane highway greatly reduces these perils.

Of the 119,000 miles of rural NHS roads, about 33,000 miles are interstates and another 28,000 miles have been upgraded to four or more lanes. The remaining 58,000 miles—more than half of this rural highway network—are still only two-lane roads with no central divider. These are the most dangerous roads on the National Highway System.

In my State of New Mexico, we have made some progress toward upgrading our rural two-lane highways to four lanes. In recent years, US550 from Bernalillo to Bloomfield, US285 from Interstate 40 to Carlsbad, and a key segment of US54 from El Paso to Alamogordo have been widened to four lanes. In addition, upgrading of US70 from Las Cruces to Clovis is nearly completed. But much more remains to be done.

New Mexico has 2,647 miles of rural roads in the NHS. Eight hundred and ninety-two of these NHS miles are interstates. Of the balance of New Mexico's NHS highways, 1,755 miles are in the rural parts of my State, especially Chaves, Colfax, Eddy, Lincoln, Guadalupe, Otero, Quay, San Juan, and Union Counties. And almost 70 percent—1,217 miles—of New Mexico's rural NHS highways remain only two-lane roads. These two-lane roads are major transportation routes with heavy truck and commercial traffic. In 2000, a total of 10.3 billion vehicle miles were traveled on New Mexico's NHS highways, and about one quarter, or 2.7 billion miles, were traveled on these rural NHS roads.

Unfortunately, there are only very limited funds available to upgrade the most important two-lane rural NHS roads to four-lane highways. According to a recent GAO study, over two-thirds of all Federal highway funding between 1992 and 2000 has gone either to roads in urban areas or to interstate highways. Consequently, there is a continuing shortfall in Federal highway funding needed to upgrade the most important rural two-lane roads. Our bill will help address the shortfall so that more rural segments of the NHS can be improved to four-lane divided highways.

As in many States, New Mexico's rural counties strongly believe their economic future depends on access to safe and efficient four-lane highways. Basic transportation infrastructure is one of the critical elements for companies choosing where to locate. Truck drivers and the traveling public prefer the safety and efficiency of a four-lane divided highway.

Thus one of the top priorities for rural cities and counties in my State is to complete the four-lane upgrade of such key routes as US54 from Tularosa to Nara Visa, US62/180 from Carlsbad to the Texas state line, US64/87 from Clayton to Raton, and US666 from north of Gallup to Shiprock. These two-lane rural routes in New Mexico not only bear some of the State's heaviest truck and automobile traffic, but also are some of the State's most dangerous roads. In fact, US666 is considered one of the most dangerous two-lane highways in the Nation.

New Mexico is not alone among western states in needing to upgrade two-lane roads on the National Highway System. For example, Texas has almost 3,500 miles of rural two-lane NHS roads. Montana has 2,469 miles, Kansas has 2,293, Nebraska 1,964, Wyoming 1,924, Minnesota 1,897, and Missouri 1,853 miles.

In the East, where States are smaller, many NHS routes remain only two lanes. In Vermont, 78 percent of rural NHS roads are only two lanes, in New Hampshire it's 84 percent and 99 percent in Maine.

I do believe it is time Congress took action to improve the safety of travelers on the highest priority rural two-lane roads. Last year, I secured nearly $1 million in Federal funding to begin the upgrade of US64/87 between Clayton and Raton, which is part of the Ports-to-Plains High Priority Corridor on the National Highway System.

In addition, last week Senator ROBERTS and I introduced S. 290, which designates U.S. Highway 54 from El Paso, Texas, through New Mexico, Texas, and Oklahoma to Wichita, Kansas, as the SPIRIT High Priority Corridor. Our bipartisan bill has four cosponsors. A high-priority corridor designation provides no additional Federal funding, but helps focus attention on the need to upgrade the nation's major two-lane routes.

The purpose of the bill we are introducing today, the Rural Four-Lane Highway Safety and Development Act of 2003, is to provide direct Federal funding to States to upgrade existing two-lane roads in rural areas to safe and efficient four-lane divided highways. The States would determine which two-lane roads they wanted to upgrade. To be eligible for funding, the highway must be on the National Highway System or a congressionally designated High Priority Corridor. Our bill gives funding priority to upgrading the most dangerous two-lane highways, routes most affected by increased traffic as a result of NAFTA, highways that have high levels of commercial traffic, and projects that will help stimulate regional economic growth. Total funding for six years is $1.8 billion from the highway trust fund.

My State bears a substantial burden in the maintenance and upgrading of its portion of critical national highways. New Mexico has 3.3 percent of the Nation's land area, but only 6 tenths of one percent of the population. We have 2.2 percent of all of the interstate highway miles and 1.7 percent of all other NHS miles. At the same time, as a border State, New Mexico is common route for trucks crossing the border with Mexico and heading to or coming from the east and west coasts. It is likely that the upgrading to four lanes of the most important NHS highways in New Mexico might not occur without the supplemental funding provided in my bill.

I continue to believe strongly in the important role of highway infrastructure to economic development. Even in this age of the so-called ''new'' economy and high-speed digital communications, roads continue to link our communities together and to carry the commercial goods and products our citizens need. Safe and efficient highways are especially important to citizens in the rural parts of our country.

I recognize that the funding level in this bill is inadequate to upgrade all of the remaining two-lane routes on the NHS in the next six years. Upgrading an existing two-lane road to a full four-lane divided highway can cost upward of one million dollars per mile.

Moreover, some of the existing two-lane roads probably don't have sufficient traffic to justify upgrading at this time. In addition, some two-lane NHS routes pass through scenic areas where it may not be appropriate to upgrade to four lanes. However, I do believe the funding in this bill will take us a long way toward ensuring the most critical projects are completed in the next six years.

This year Congress will take up the reauthorization of the comprehensive six-year transportation bill, TEA–21. We are introducing this bipartisan bill today to help ensure that the issue of the safety of rural two-lane NHS routes receives the attention it deserves as the debate on reauthorization begins. I look forward to working with the chairman of the Environment and Public Works Committee, Senator INHOFE, and Senator JEFFORDS, the ranking member, as well as Senators BOND and

REID of the Transportation, Infrastructure and Nuclear Safety Subcommittee, to find a way to ensure additional federal resources are in place to hasten the work of upgrading rural two-lane NHS roads to safe, efficient four-lane divided highways.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 365

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Rural Four-Lane Highway Safety and Development Act of 2003''.

SEC. 2. RURAL 4-LANE HIGHWAY DEVELOPMENT PROGRAM.

(a) IN GENERAL.—Title 23, United States Code, is amended by inserting after section 138 the following:

''§ 139. Rural 4-lane highway development program

''(a) DEFINITIONS.—In this section:

''(1) 2-LANE HIGHWAY.—The term '2-lane highway' means a highway that has not more than 1 lane of traffic in each direction.

''(2) 4-LANE HIGHWAY.—The term '4-lane highway' means a highway that has 2 lanes of traffic in each direction.

''(b) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish and carry out a program to make allocations to States for projects, consisting of planning, design, environmental review, and construction, to expand eligible 2-lane highways in rural areas to 4-lane highways.

''(c) APPLICATIONS.—To be eligible to receive an allocation under this section, a State shall submit to the Secretary an application at such time, in such form, and containing such information as the Secretary may require.

''(d) ELIGIBLE HIGHWAYS.—The Secretary may make allocations under this section only for projects to expand 2-lane highways that are on—

''(1) the National Highway System; or

''(2) a high priority corridor identified under section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2032).

''(e) PRIORITY IN SELECTION.—In making allocations under this section, the Secretary shall give priority to—

''(1) projects to improve highway safety on the most dangerous rural 2-lane highways on the National Highway System;

''(2) projects carried out on rural highways with respect to which the annual volume of commercial vehicle traffic—

''(A) has increased since the date of enactment of the North American Free Trade Agreement Implementation Act (107 Stat. 2057); or

''(B) is expected to increase after the date of enactment of this section;

''(3) projects carried out on rural highways with high levels of commercial truck traffic; and

''(4) projects on highway corridors that will help stimulate regional economic growth and development in rural areas.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this section $300,000,000 for each of fiscal years 2004 through 2009.''.

(b) CONFORMING AMENDMENT.—The analysis for chapter 1 of title 23, United States Code, is amended by inserting after the item relating to section 138 the following:

''139. Rural 4-lane highway development program.''.

By Mr. JEFFORDS (for himself, Ms. COLLINS, Mr. LIBBERMAN, Ms. SNOWE, Mr. SCHUMER, Mr. BIDEN, Mrs. BOXER, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. EDWARDS, Mr. FEINGOLD, Mrs. FEINSTEIN, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. REED, Mr. SARBANES, and Mr. WYDEN):

S. 366. A bill to amend the Clean Air Act to reduce emissions from electric powerplants, and for other purposes; to the Committee on Environment and Public Works.

Mr. JEFFORDS. Mr. President, today I am pleased to introduce the Clean Power Act of 2003 along with 19 of my colleagues, Republicans and Democrats. That is a fifth of the Senate on record supporting a measure which dramatically reduces emissions of four pollutants coming from power plants—sulfur dioxide, nitrogen oxides, carbon dioxide and mercury.

These pollutants create or contribute to smog, soot, acid rain, mercury contamination and global warming. They cause death, disease, ecological degradation, birth defects, and increase the risk of abrupt and unwelcome climate changes.

The nation has made some impressive strides in reducing air pollution since 1990. But there is a lot of unfinished business, a fact confirmed every day by more and ever better science.

Power plants are still the nation's single largest source of air pollution, including greenhouse gases. They are responsible for 60 percent or more of national sulfur dioxide emissions, 25 percent of nitrogen oxides, 40 percent of carbon dioxide, and about 45 tons of mercury annually.

Fine particulate matter coming from power plants, mainly through SO_X and NO_X emissions, is causing or contributing to the premature deaths of approximately 30,000 people.

More than 130 million people are living in areas with unhealthy air. Ground-level ozone triggers over 6.2 million asthma attacks each summer in the eastern United States alone, and some studies show that it may actually cause asthma. Another 160,000 people are sent to emergency rooms due to smog-induced respiratory illness. Power plants are significant contributors to this air quality degradation, as well as causing major reductions in visibility in our national parks and wild places. The National Park Service posts air quality warning signs for hikers in the Great Smoky Mountains every other day on average during the high ozone season.

Acid rain continues to fall on the Northeast, and the Southeast, damaging sensitive ecosystems and acidifying lakes and streams. In my state of Vermont, the red spruce, the sugar maple, and other species are becoming more and more immune-compromised.

The Hubbard Brook Research Foundation says we must reduce sulfur dioxide emissions by 80 percent from current Clean Air Act requirements to begin biological recovery mid-century in the Northeastern U.S. That means bringing emissions way down now, not prolonging the wait for healthy trees and lakes.

Coal-fired power plants emit the bulk of the uncontrolled mercury emissions in the U.S. Mercury is a potent neurotoxic pollutant. It contaminates fish causing fish consumption warnings in 41 States. And mercury puts over 60,000 children at risk of negative developmental effects due to fetal exposure.

Despite our international commitment to reduce greenhouse gas emissions to 1990 levels through voluntary means, we have failed. In particular, power sector emissions of carbon dioxide, a major greenhouse gas, have increased by more than 25 percent since 1990. This failure increases the risks from global warming.

It is plainly obvious that we must make swift and major reductions in these pollutants for the sake of public health, the environment, and the world's climate. Without quick action, the nation's fleet of fossil power plants will continue to inefficiently belch out millions of tons of harmful pollutants.

The Clean Power Act of 2003 will mainly use the largely successful cap-and-trade system in the 1990 Clean Air Act Amendments to make quick and cost-effective reductions in these pollutants. At the same time, this bill does not abolish or eliminate any of the vital local and regional air quality protection programs in the Clean Air Act. Our bill reduces emissions of sulfur dioxide by 81 percent from 2000. Nitrogen oxides will be reduced by 71 percent from 2000. And carbon dioxide will be capped at 21 percent below 2000 levels. Mercury will be controlled to 90 percent below 1999 levels.

This bill has a hybrid allocation system for distributing the allowances for the three capped and tradable pollutants (NO_X, SO_X, CO_2). Most allocations, about ⅔, go to households and consumers. The rest go to renewable energy, energy efficiency, and other categories. This system rewards cleaner power producers and ensures that the public gets compensated for the polluters' use of the atmosphere.

Our bill is intended to save the lives that are now being lost prematurely to lung disease and other illnesses. We want to continue on the path set in 1990 of reducing acid rain.

We want certainty that mercury will no longer threaten unborn children and the future environment will be safer and cleaner for them when they are grown.

Certainty is a valuable commodity. Industry witnesses have testified that certainty is critical to their investment strategies. Our bill provides a

clear signal on exactly what is expected of pollution sources and when.

I want certainty that the promise of the Clean Air Act will be delivered to all Americans.

At the Environment and Public Works Committee, we have heard many times that technologies are readily available to meet the challenges in our bill. And that these challenges can be met in a cost-effective manner that allows our economy to prosper and improve public health.

We can't afford to slow down progress on achieving better air quality and we must start to make real progress in reducing greenhouse gas emissions. The voluntary approach has failed for 12 years now and we must do better.

As Senators may know, when I was Chairman of the Senate Environment and Public Works Committee, we approved a bill nearly identical to the bill that we are introducing today. The only significant difference is that the deadline for compliance with all the pollution caps except mercury have been moved later by one year. Mercury still follows the schedule in the consent decree which requires compliance by 2008.

I look forward to entering into serious discussions with the Administration on signing into law good, comprehensive four-pollutant legislation. However, their actions so far on air quality matters have not fostered an atmosphere of trust and cooperation.

I ask unanimous consent that a brief summary of the legislation and the text of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 366

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Clean Power Act of 2003''.

SEC. 2. ELECTRIC ENERGY GENERATION EMISSION REDUCTIONS.

(a) IN GENERAL.—The Clean Air Act (42 U.S.C. 7401 et seq.) is amended by adding at the end the following:

''TITLE VII—ELECTRIC ENERGY GENERATION EMISSION REDUCTIONS

''SEC. 701. FINDINGS.

''Congress finds that—

''(1) public health and the environment continue to suffer as a result of pollution emitted by powerplants across the United States, despite the success of Public Law 101–549 (commonly known as the 'Clean Air Act Amendments of 1990') (42 U.S.C. 7401 et seq.) in reducing emissions;

''(2) according to the most reliable scientific knowledge, acid rain precursors must be significantly reduced for the ecosystems of the Northeast and Southeast to recover from the ecological harm caused by acid deposition;

''(3) because lakes and sediments across the United States are being contaminated by mercury emitted by powerplants, there is an increasing risk of mercury poisoning of aquatic habitats and fish-consuming human populations;

''(4)(A) electricity generation accounts for approximately 40 percent of the total emissions in the United States of carbon dioxide, a major greenhouse gas causing global warming; and

''(B) the quantity of carbon dioxide in the atmosphere is growing without constraint and well beyond the international commitments of the United States;

''(5) the cumulative impact of powerplant emissions on public and environmental health must be addressed swiftly by reducing those harmful emissions to levels that are less threatening; and

''(6)(A) the atmosphere is a public resource; and

''(B) emission allowances, representing permission to use that resource for disposal of air pollution from electricity generation, should be allocated to promote public purposes, including—

''(i) protecting electricity consumers from adverse economic impacts;

''(ii) providing transition assistance to adversely affected employees, communities, and industries; and

''(iii) promoting clean energy resources and energy efficiency.

''SEC. 702. PURPOSES.

''The purposes of this title are—

''(1) to alleviate the environmental and public health damage caused by emissions of sulfur dioxide, nitrogen oxides, carbon dioxide, and mercury resulting from the combustion of fossil fuels in the generation of electric and thermal energy;

''(2) to reduce by 2009 the annual national emissions from electricity generating facilities to not more than—

''(A) 2,250,000 tons of sulfur dioxide;

''(B) 1,510,000 tons of nitrogen oxides; and

''(C) 2,050,000,000 tons of carbon dioxide;

''(3) to reduce by 2008 the annual national emissions of mercury from electricity generating facilities to not more than 5 tons;

''(4) to effectuate the reductions described in paragraphs (2) and (3) by—

''(A) requiring electricity generating facilities to comply with specified emission limitations by specified deadlines; and

''(B) allowing electricity generating facilities to meet the emission limitations (other than the emission limitation for mercury) through an alternative method of compliance consisting of an emission allowance and transfer system; and

''(5) to encourage energy conservation, use of renewable and clean alternative technologies, and pollution prevention as long-range strategies, consistent with this title, for reducing air pollution and other adverse impacts of energy generation and use.

''SEC. 703. DEFINITIONS.

''In this title:

''(1) COVERED POLLUTANT.—The term 'covered pollutant' means—

''(A) sulfur dioxide;

''(B) any nitrogen oxide;

''(C) carbon dioxide; and

''(D) mercury.

''(2) ELECTRICITY GENERATING FACILITY.—The term 'electricity generating facility' means an electric or thermal electricity generating unit, a combination of such units, or a combination of 1 or more such units and 1 or more combustion devices, that—

''(A) has a nameplate capacity of 15 megawatts or more (or the equivalent in thermal energy generation, determined in accordance with a methodology developed by the Administrator);

''(B) generates electric energy, for sale, through combustion of fossil fuel; and

''(C) emits a covered pollutant into the atmosphere.

''(3) ELECTRICITY INTENSIVE PRODUCT.—The term 'electricity intensive product' means a product with respect to which the cost of electricity consumed in the production of the product represents more than 5 percent of the value of the product.

''(4) EMISSION ALLOWANCE.—The term 'emission allowance' means a limited authorization to emit in accordance with this title—

''(A) 1 ton of sulfur dioxide;

''(B) 1 ton of nitrogen oxides; or

''(C) 1 ton of carbon dioxide.

''(5) ENERGY EFFICIENCY PROJECT.—The term 'energy efficiency project' means any specific action (other than ownership or operation of an energy efficient building) commenced after the date of enactment of this title—

''(A) at a facility (other than an electricity generating facility), that verifiably reduces the annual electricity or natural gas consumption per unit output of the facility, as compared with the annual electricity or natural gas consumption per unit output that would be expected in the absence of an allocation of emission allowances (as determined by the Administrator); or

''(B) by an entity that is primarily engaged in the transmission and distribution of electricity, that significantly improves the efficiency of that type of entity, as compared with standards for efficiency developed by the Administrator, in consultation with the Secretary of Energy, after the date of enactment of this title.

''(6) ENERGY EFFICIENT BUILDING.—The term 'energy efficient building' means a residential building or commercial building completed after the date of enactment of this title for which the projected lifetime consumption of electricity or natural gas for heating, cooling, and ventilation is at least 30 percent less than the lifetime consumption of a typical new residential building or commercial building, as determined by the Administrator (in consultation with the Secretary of Energy)—

''(A) on a State or regional basis; and

''(B) taking into consideration—

''(i) applicable building codes; and

''(ii) consumption levels achieved in practice by new residential buildings or commercial buildings in the absence of an allocation of emission allowances.

''(7) ENERGY EFFICIENT PRODUCT.—The term 'energy efficient product' means a product manufactured after the date of enactment of this title that has an expected lifetime electricity or natural gas consumption that—

''(A) is less than the average lifetime electricity or natural gas consumption for that type of product; and

''(B) does not exceed the lesser of—

''(i) the maximum energy consumption that qualifies for the applicable Energy Star label for that type of product; or

''(ii) the average energy consumption of the most efficient 25 percent of that type of product manufactured in the same year.

''(8) LIFETIME.—The term 'lifetime' means—

''(A) in the case of a residential building that is an energy efficient building, 30 years;

''(B) in the case of a commercial building that is an energy efficient building, 15 years; and

''(C) in the case of an energy efficient product, a period determined by the Administrator to be the average life of that type of energy efficient product.

''(9) MERCURY.—The term 'mercury' includes any mercury compound.

''(10) NEW CLEAN FOSSIL FUEL-FIRED ELECTRICITY GENERATING UNIT.—The term 'new clean fossil fuel-fired electricity generating unit' means a unit that—

''(A) has been in operation for 10 years or less; and

''(B) is—

''(i) a natural gas fired generator that—

''(I) has an energy conversion efficiency of at least 55 percent; and

''(II) uses best available control technology (as defined in section 169);

''(ii) a generator that—

''(I) uses integrated gasification combined cycle technology;

''(II) uses best available control technology (as defined in section 169); and

''(III) has an energy conversion efficiency of at least 45 percent; or

''(iii) a fuel cell operating on fuel derived from a nonrenewable source of energy.

''(11) NONWESTERN REGION.—The term 'nonwestern region' means the area of the States that is not included in the western region.

''(12) RENEWABLE ELECTRICITY GENERATING UNIT.—The term 'renewable electricity generating unit' means a unit that—

''(A) has been in operation for 10 years or less; and

''(B) generates electric energy by means of—

''(i) wind;

''(ii) biomass;

''(iii) landfill gas;

''(iv) a geothermal, solar thermal, or photovoltaic source; or

''(v) a fuel cell operating on fuel derived from a renewable source of energy.

''(13) SMALL ELECTRICITY GENERATING FACILITY.—The term 'small electricity generating facility' means an electric or thermal electricity generating unit, or combination of units, that—

''(A) has a nameplate capacity of less than 15 megawatts (or the equivalent in thermal energy generation, determined in accordance with a methodology developed by the Administrator);

''(B) generates electric energy, for sale, through combustion of fossil fuel; and

''(C) emits a covered pollutant into the atmosphere.

''(14) WESTERN REGION.—The term 'western region' means the area comprising the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

''SEC. 704. EMISSION LIMITATIONS.

''(a) IN GENERAL.—Subject to subsections (b) and (c), the Administrator shall promulgate regulations to ensure that, during 2009 and each year thereafter, the total annual emissions of covered pollutants from all electricity generating facilities located in all States does not exceed—

''(1) in the case of sulfur dioxide—

''(A) 275,000 tons in the western region; or

''(B) 1,975,000 tons in the nonwestern region;

''(2) in the case of nitrogen oxides, 1,510,000 tons;

''(3) in the case of carbon dioxide, 2,050,000,000 tons; or

''(4) in the case of mercury, 5 tons.

''(b) EXCESS EMISSIONS BASED ON UNUSED ALLOWANCES.—The regulations promulgated under subsection (a) shall authorize emissions of covered pollutants in excess of the national emission limitations established under that subsection for a year to the extent that the number of tons of the excess emissions is less than or equal to the number of emission allowances that are—

''(1) used in the year; but

''(2) allocated for any previous year under section 707.

''(c) REDUCTIONS.—For 2009 and each year thereafter, the quantity of emissions specified for each covered pollutant in subsection (a) shall be reduced by the sum of—

''(1) the number of tons of the covered pollutant that were emitted by small electricity generating facilities in the second preceding year; and

''(2) any number of tons of reductions in emissions of the covered pollutant required under section 705(h).

''SEC. 705. EMISSION ALLOWANCES.

''(a) CREATION AND ALLOCATION.—

''(1) IN GENERAL.—For 2009 and each year thereafter, subject to paragraph (2), there are created, and the Administrator shall allocate in accordance with section 707, emission allowances as follows:

''(A) In the case of sulfur dioxide—

''(i) 275,000 emission allowances for each year for use in the western region; and

''(ii) 1,975,000 emission allowances for each year for use in the nonwestern region.

''(B) In the case of nitrogen oxides, 1,510,000 emission allowances for each year.

''(C) In the case of carbon dioxide, 2,050,000,000 emission allowances for each year.

''(2) REDUCTIONS.—For 2009 and each year thereafter, the number of emission allowances specified for each covered pollutant in paragraph (1) shall be reduced by a number equal to the sum of—

''(A) the number of tons of the covered pollutant that were emitted by small electricity generating facilities in the second preceding year; and

''(B) any number of tons of reductions in emissions of the covered pollutant required under subsection (h).

''(b) NATURE OF EMISSION ALLOWANCES.—

''(1) NOT A PROPERTY RIGHT.—An emission allowance allocated by the Administrator under subsection (a) is not a property right.

''(2) NO LIMIT ON AUTHORITY TO TERMINATE OR LIMIT.—Nothing in this title or any other provision of law limits the authority of the United States to terminate or limit an emission allowance.

''(3) TRACKING AND TRANSFER OF EMISSION ALLOWANCES.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations to establish an emission allowance tracking and transfer system for emission allowances of sulfur dioxide, nitrogen oxides, and carbon dioxide.

''(B) REQUIREMENTS.—The emission allowance tracking and transfer system established under subparagraph (A) shall—

''(i) incorporate the requirements of subsections (b) and (d) of section 412 (except that written certification by the transferee shall not be necessary to effect a transfer); and

''(ii) permit any entity—

''(I) to buy, sell, or hold an emission allowance; and

''(II) to permanently retire an unused emission allowance.

''(C) PROCEEDS OF TRANSFERS.—Proceeds from the transfer of emission allowances by any person to which the emission allowances have been allocated—

''(i) shall not constitute funds of the United States; and

''(ii) shall not be available to meet any obligations of the United States.

''(c) IDENTIFICATION AND USE.—

''(1) IN GENERAL.—Each emission allowance allocated by the Administrator shall bear a unique serial number, including—

''(A) an identifier of the covered pollutant to which the emission allowance pertains; and

''(B) the first year for which the allowance may be used.

''(2) SULFUR DIOXIDE EMISSION ALLOWANCES.—In the case of sulfur dioxide emission allowances, the Administrator shall ensure that the emission allowances allocated to electricity generating facilities in the western region are distinguishable from emission allowances allocated to electricity generating facilities in the nonwestern region.

''(3) YEAR OF USE.—Each emission allowance may be used in the year for which the emission allowance is allocated or in any subsequent year.

''(d) ANNUAL SUBMISSION OF EMISSION ALLOWANCES.—

''(1) IN GENERAL.—On or before April 1, 2010, and April 1 of each year thereafter, the owner or operator of each electricity generating facility shall submit to the Administrator 1 emission allowance for the applicable covered pollutant (other than mercury) for each ton of sulfur dioxide, nitrogen oxides, or carbon dioxide emitted by the electricity generating facility during the previous calendar year.

''(2) SPECIAL RULE FOR OZONE EXCEEDANCES.—

''(A) IDENTIFICATION OF FACILITIES CONTRIBUTING TO NONATTAINMENT.—Not later than December 31, 2008, and the end of each 3-year period thereafter, each State, consistent with the obligations of the State under section 110(a)(2)(D), shall identify the electricity generating facilities in the State and in other States that are significantly contributing (as determined based on guidance issued by the Administrator) to nonattainment of the national ambient air quality standard for ozone in the State.

''(B) SUBMISSION OF ADDITIONAL ALLOWANCES.—In 2009 and each year thereafter, on petition from a State or a person demonstrating that the control measures in effect at an electricity generating facility that is identified under subparagraph (A) as significantly contributing to nonattainment of the national ambient air quality standard for ozone in a State during the previous year are inadequate to prevent the significant contribution described in subparagraph (A), the Administrator, if the Administrator determines that the electricity generating facility is inadequately controlled for nitrogen oxides, may require that the electricity generating facility submit 3 nitrogen oxide emission allowances for each ton of nitrogen oxides emitted by the electricity generating facility during any period of an exceedance of the national ambient air quality standard for ozone in the State during the previous year.

''(3) REGIONAL LIMITATIONS FOR SULFUR DIOXIDE.—The Administrator shall not allow—

''(A) the use of sulfur dioxide emission allowances allocated for the western region to meet the obligations under this subsection of electricity generating facilities in the nonwestern region; or

''(B) the use of sulfur dioxide emission allowances allocated for the nonwestern region to meet the obligations under this subsection of electricity generating facilities in the western region.

''(e) EMISSION VERIFICATION, MONITORING, AND RECORDKEEPING.—

''(1) IN GENERAL.—The Administrator shall ensure that Federal regulations, in combination with any applicable State regulations, are adequate to verify, monitor, and document emissions of covered pollutants from electricity generating facilities.

''(2) INVENTORY OF EMISSIONS FROM SMALL ELECTRICITY GENERATING FACILITIES.—On or before January 1, 2005, the Administrator, in cooperation with State agencies, shall complete, and on an annual basis update, a comprehensive inventory of emissions of sulfur dioxide, nitrogen oxides, carbon dioxide, and particulate matter from small electricity generating facilities.

''(3) MONITORING INFORMATION.—

''(A) IN GENERAL.—Not later than 180 days after the date of enactment of this title, the Administrator shall promulgate regulations to require each electricity generating facility to submit to the Administrator—

''(i) not later than April 1 of each year, verifiable information on covered pollutants emitted by the electricity generating facility in the previous year, expressed in—

''(I) tons of covered pollutants; and

''(II) tons of covered pollutants per megawatt hour of energy (or the equivalent thermal energy) generated; and

''(ii) as part of the first submission under clause (i), verifiable information on covered pollutants emitted by the electricity generating facility in 2000, 2001, and 2002, if the electricity generating facility was required to report that information in those years.

''(B) SOURCE OF INFORMATION.—Information submitted under subparagraph (A) shall be obtained using a continuous emission monitoring system (as defined in section 402).

''(C) AVAILABILITY TO THE PUBLIC.—The information described in subparagraph (A) shall be made available to the public—

''(i) in the case of the first year in which the information is required to be submitted under that subparagraph, not later than 18 months after the date of enactment of this title; and

''(ii) in the case of each year thereafter, not later than April 1 of the year.

''(4) AMBIENT AIR QUALITY MONITORING FOR SULFUR DIOXIDE AND HAZARDOUS AIR POLLUTANTS.—

''(A) IN GENERAL.—Beginning January 1, 2005, each coal-fired electricity generating facility with an aggregate generating capacity of 50 megawatts or more shall, in accordance with guidelines issued by the Administrator, commence ambient air quality monitoring within a 30-mile radius of the coal-fired electricity generating facility for the purpose of measuring maximum concentrations of sulfur dioxide and hazardous air pollutants emitted by the coal-fired electricity generating facility.

''(B) LOCATION OF MONITORING POINTS.—Monitoring under subparagraph (A) shall include monitoring at not fewer than 2 points—

''(i) that are at ground level and within 3 miles of the coal-fired electricity generating facility;

''(ii) at which the concentration of pollutants being monitored is expected to be the greatest; and

''(iii) at which the monitoring shall be the most frequent.

''(C) FREQUENCY OF MONITORING OF SULFUR DIOXIDE.—Monitoring of sulfur dioxide under subparagraph (A) shall be carried out on a continuous basis and averaged over 5-minute periods.

''(D) AVAILABILITY TO THE PUBLIC.—The results of the monitoring under subparagraph (A) shall be made available to the public.

''(f) EXCESS EMISSION PENALTY.—

''(1) IN GENERAL.—Subject to paragraph (2), section 411 shall be applicable to an owner or operator of an electricity generating facility.

''(2) CALCULATION OF PENALTY.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the penalty for failure to submit emission allowances for covered pollutants as required under subsection (d) shall be equal to 3 times the product obtained by multiplying—

''(i) as applicable—

''(I) the number of tons emitted in excess of the emission limitation requirement applicable to the electricity generating facility; or

''(II) the number of emission allowances that the owner or operator failed to submit; and

''(ii) the average annual market price of emission allowances (as determined by the Administrator).

''(B) MERCURY.—In the case of mercury, the penalty shall be equal to 3 times the product obtained by multiplying—

''(i) the number of grams emitted in excess of the emission limitation requirement for mercury applicable to the electricity generating facility; and

''(ii) the average cost of mercury controls at electricity generating units that have a nameplate capacity of 15 megawatts or more in all States (as determined by the Administrator).

''(g) SIGNIFICANT ADVERSE LOCAL IMPACTS.—

''(1) IN GENERAL.—If the Administrator determines that emissions of an electricity generating facility may reasonably be anticipated to cause or contribute to a significant adverse impact on an area (including endangerment of public health, contribution to acid deposition in a sensitive receptor area, and other degradation of the environment), the Administrator shall limit the emissions of the electricity generating facility as necessary to avoid that impact.

''(2) VIOLATION.—Notwithstanding the availability of emission allowances, it shall be a violation of this Act for any electricity generating facility to exceed any limitation on emissions established under paragraph (1).

''(h) ADDITIONAL REDUCTIONS.—

''(1) PROTECTION OF PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT.—If the Administrator determines that the emission levels necessary to achieve the national emission limitations established under section 704 are not reasonably anticipated to protect public health or welfare or the environment (including protection of children, pregnant women, minority or low-income communities, and other sensitive populations), the Administrator may require reductions in emissions from electricity generating facilities in addition to the reductions required under the other provisions of this title.

''(2) EMISSION ALLOWANCE TRADING.—

''(A) STUDIES.—

''(i) IN GENERAL.—In 2011 and at the end of each 3-year period thereafter, the Administrator shall complete a study of the impacts of the emission allowance trading authorized under this title.

''(ii) REQUIRED ASSESSMENT.—The study shall include an assessment of ambient air quality in areas surrounding electricity generating facilities that participate in emission allowance trading, including a comparison between—

''(I) the ambient air quality in those areas; and

''(II) the national average ambient air quality.

''(B) LIMITATION ON EMISSIONS.—If the Administrator determines, based on the results of a study under subparagraph (A), that adverse local impacts result from emission allowance trading, the Administrator may require reductions in emissions from electricity generating facilities in addition to the reductions required under the other provisions of this title.

''(i) USE OF CERTAIN OTHER EMISSION ALLOWANCES.—

''(1) IN GENERAL.—Subject to paragraph (2), emission allowances or other emission trading instruments created under title I or IV for sulfur dioxide or nitrogen oxides shall not be valid for submission under subsection (d).

''(2) EMISSION ALLOWANCES PLACED IN RESERVE.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an emission allowance described in paragraph (1) that was placed in reserve under section 404(a)(2) or 405 or through regulations implementing controls on nitrogen oxides, because an affected unit emitted fewer tons of sulfur dioxide or nitrogen oxides than were permitted under an emission limitation imposed under title I or IV before the date of enactment of this title, shall be considered to be equivalent to ¼ of an emission allowance created by subsection (a) for sulfur dioxide or nitrogen oxides, respectively.

''(B) EMISSION ALLOWANCES RESULTING FROM ACHIEVEMENT OF NEW SOURCE PERFORMANCE STANDARDS.—If an emission allowance described in subparagraph (A) was created and placed in reserve during the period of 2001 through 2008 by the owner or operator of an electricity generating facility through the application of pollution control technology that resulted in the achievement and maintenance by the electricity generating facility of the applicable standards of performance required of new sources under section 111, the emission allowance shall be valid for submission under subsection (d).

''SEC. 706. PERMITTING AND TRADING OF EMISSION ALLOWANCES.

''(a) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations to establish a permitting and emission allowance trading compliance program to implement the limitations on emissions of covered pollutants from electricity generating facilities established under section 704.

''(b) EMISSION ALLOWANCE TRADING WITH FACILITIES OTHER THAN ELECTRICITY GENERATING FACILITIES.—

''(1) IN GENERAL.—Subject to paragraph (2) and section 705(i), the regulations promulgated to establish the program under subsection (a) shall prohibit use of emission allowances generated from other emission control programs for the purpose of demonstrating compliance with the limitations on emissions of covered pollutants from electricity generating facilities established under section 704.

''(2) EXCEPTION FOR CERTAIN CARBON DIOXIDE EMISSION CONTROL PROGRAMS.—The prohibition described in paragraph (1) shall not apply in the case of carbon dioxide emission allowances generated from an emission control program that limits total carbon dioxide emissions from the entirety of any industrial sector.

''(c) METHODOLOGY.—The program established under subsection (a) shall clearly identify the methodology for the allocation of emission allowances, including standards for measuring annual electricity generation and energy efficiency as the standards relate to emissions.

''SEC. 707. EMISSION ALLOWANCE ALLOCATION.

''(a) ALLOCATION TO ELECTRICITY CONSUMERS.—

''(1) IN GENERAL.—For 2009 and each year thereafter, after making allocations of emission allowances under subsections (b) through (f), the Administrator shall allocate the remaining emission allowances created

by section 705(a) for the year for each covered pollutant other than mercury to households served by electricity.

''(2) ALLOCATION AMONG HOUSEHOLDS.—The allocation to each household shall reflect—

''(A) the number of persons residing in the household; and

''(B) the ratio that—

''(i) the quantity of the residential electricity consumption of the State in which the household is located; bears to

''(ii) the quantity of the residential electricity consumption of all States.

''(3) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations making appropriate arrangements for the allocation of emission allowances to households under this subsection, including as necessary the appointment of 1 or more trustees—

''(A) to receive the emission allowances for the benefit of the households;

''(B) to obtain fair market value for the emission allowances; and

''(C) to distribute the proceeds to the beneficiaries.

''(b) ALLOCATION FOR TRANSITION ASSISTANCE.—

''(1) IN GENERAL.—For 2009 and each year thereafter through 2018, the Administrator shall allocate the percentage specified in paragraph (2) of the emission allowances created by section 705(a) for the year for each covered pollutant other than mercury in the following manner:

''(A) 80 percent shall be allocated to provide transition assistance to—

''(i) dislocated workers (as defined in section 101 of the Workforce Investment Act of 1998 (29 U.S.C. 2801)) whose employment has been terminated or who have been laid off as a result of the emission reductions required by this title; and

''(ii) communities that have experienced disproportionate adverse economic impacts as a result of the emission reductions required by this title.

''(B) 20 percent shall be allocated to producers of electricity intensive products in a number equal to the product obtained by multiplying—

''(i) the ratio that—

''(I) the quantity of each electricity intensive product produced by each producer in the previous year; bears to

''(II) the quantity of the electricity intensive product produced by all producers in the previous year;

''(ii) the average quantity of electricity used in producing the electricity intensive product by producers that use the most energy efficient process for producing the electricity intensive product; and

''(iii) with respect to the previous year, the national average quantity (expressed in tons) of emissions of each such pollutant per megawatt hour of electricity generated by electricity generating facilities in all States.

''(2) SPECIFIED PERCENTAGES.—The percentages referred to in paragraph (1) are—

''(A) in the case of 2009, 6 percent;

''(B) in the case of 2010, 5.5 percent;

''(C) in the case of 2011, 5 percent;

''(D) in the case of 2012, 4.5 percent;

''(E) in the case of 2013, 4 percent;

''(F) in the case of 2014, 3.5 percent;

''(G) in the case of 2015, 3 percent;

''(H) in the case of 2016, 2.5 percent;

''(I) in the case of 2017, 2 percent; and

''(J) in the case of 2018, 1.5 percent.

''(3) REGULATIONS FOR ALLOCATION FOR TRANSITION ASSISTANCE TO DISLOCATED WORKERS AND COMMUNITIES.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations making appropriate arrangements for the distribution of emission allowances under paragraph (1)(A), including as necessary the appointment of 1 or more trustees—

''(i) to receive the emission allowances allocated under paragraph (1)(A) for the benefit of the dislocated workers and communities;

''(ii) to obtain fair market value for the emission allowances; and

''(iii) to apply the proceeds to providing transition assistance to the dislocated workers and communities.

''(B) FORM OF TRANSITION ASSISTANCE.—Transition assistance under paragraph (1)(A) may take the form of—

''(i) grants to employers, employer associations, and representatives of employees—

''(I) to provide training, adjustment assistance, and employment services to dislocated workers; and

''(II) to make income-maintenance and needs-related payments to dislocated workers; and

''(ii) grants to States and local governments to assist communities in attracting new employers or providing essential local government services.

''(c) ALLOCATION TO RENEWABLE ELECTRICITY GENERATING UNITS, EFFICIENCY PROJECTS, AND CLEANER ENERGY SOURCES.—For 2009 and each year thereafter, the Administrator shall allocate not more than 20 percent of the emission allowances created by section 705(a) for the year for each covered pollutant other than mercury—

''(1) to owners and operators of renewable electricity generating units, in a number equal to the product obtained by multiplying—

''(A) the number of megawatt hours of electricity generated in the previous year by each renewable electricity generating unit; and

''(B) with respect to the previous year, the national average quantity (expressed in tons) of emissions of each such pollutant per megawatt hour of electricity generated by electricity generating facilities in all States;

''(2) to owners and operators of energy efficient buildings, producers of energy efficient products, and entities that carry out energy efficient projects, in a number equal to the product obtained by multiplying—

''(A) the number of megawatt hours of electricity or cubic feet of natural gas saved in the previous year as a result of each energy efficient building, energy efficient product, or energy efficiency project; and

''(B) with respect to the previous year, the national average quantity (expressed in tons) of emissions of each such pollutant per, as appropriate—

''(i) megawatt hour of electricity generated by electricity generating facilities in all States; or

''(ii) cubic foot of natural gas burned for a purpose other than generation of electricity in all States;

''(3) to owners and operators of new clean fossil fuel-fired electricity generating units, in a number equal to the product obtained by multiplying—

''(A) the number of megawatt hours of electricity generated in the previous year by each new clean fossil fuel-fired electricity generating unit; and

''(B) with respect to the previous year, ½ of the national average quantity (expressed in tons) of emissions of each such pollutant per megawatt hour of electricity generated by electricity generating facilities in all States; and

''(4) to owners and operators of combined heat and power electricity generating facilities, in a number equal to the product obtained by multiplying—

''(A) the number of British thermal units of thermal energy produced and put to productive use in the previous year by each combined heat and power electricity generating facility; and

''(B) with respect to the previous year, the national average quantity (expressed in tons) of emissions of each such pollutant per British thermal unit of thermal energy generated by electricity generating facilities in all States.

''(d) TRANSITION ASSISTANCE TO ELECTRICITY GENERATING FACILITIES.—

''(1) IN GENERAL.—For 2009 and each year thereafter through 2018, the Administrator shall allocate the percentage specified in paragraph (2) of the emission allowances created by section 705(a) for the year for each covered pollutant other than mercury to the owners or operators of electricity generating facilities in the ratio that—

''(A) the quantity of electricity generated by each electricity generating facility in 2001; bears to

''(B) the quantity of electricity generated by all electricity generating facilities in 2001.

''(2) SPECIFIED PERCENTAGES.—The percentages referred to in paragraph (1) are—

''(A) in the case of 2009, 10 percent;

''(B) in the case of 2010, 9 percent;

''(C) in the case of 2011, 8 percent;

''(D) in the case of 2012, 7 percent;

''(E) in the case of 2013, 6 percent;

''(F) in the case of 2014, 5 percent;

''(G) in the case of 2015, 4 percent;

''(H) in the case of 2016, 3 percent;

''(I) in the case of 2017, 2 percent; and

''(J) in the case of 2018, 1 percent.

''(e) ALLOCATION TO ENCOURAGE BIOLOGICAL CARBON SEQUESTRATION.—

''(1) IN GENERAL.—For 2009 and each year thereafter, the Administrator shall allocate, on a competitive basis and in accordance with paragraphs (2) and (3), not more than 0.075 percent of the carbon dioxide emission allowances created by section 705(a) for the year for the purposes of—

''(A) carrying out projects to reduce net carbon dioxide emissions through biological carbon dioxide sequestration in the United States that—

''(i) result in benefits to watersheds and fish and wildlife habitats; and

''(ii) are conducted in accordance with project reporting, monitoring, and verification guidelines based on—

''(I) measurement of increases in carbon storage in excess of the carbon storage that would have occurred in the absence of such a project;

''(II) comprehensive carbon accounting that—

''(aa) reflects net increases in carbon reservoirs; and

''(bb) takes into account any carbon emissions resulting from disturbance of carbon reservoirs in existence as of the date of commencement of the project;

''(III) adjustments to account for—

''(aa) emissions of carbon that may result at other locations as a result of the impact of the project on timber supplies; or

''(bb) potential displacement of carbon emissions to other land owned by the entity that carries out the project; and

''(IV) adjustments to reflect the expected carbon storage over various time periods, taking into account the likely duration of the storage of the carbon stored in a carbon reservoir; and

''(B) conducting accurate inventories of carbon sinks.

''(2) CARBON INVENTORY.—The Administrator, in consultation with the Secretary of Agriculture, shall allocate not more than ⅓ of the emission allowances described in paragraph (1) to not more than 5 State or multistate land or forest management agencies or nonprofit entities that—

''(A) have a primary goal of land conservation; and

''(B) submit to the Administrator proposals for projects—

''(i) to demonstrate and assess the potential for the development and use of carbon inventorying and accounting systems;

''(ii) to improve the standards relating to, and the identification of, incremental carbon sequestration in forests, agricultural soil, grassland, or rangeland; or

''(iii) to assist in development of a national biological carbon storage baseline or inventory.

''(3) REVOLVING LOAN PROGRAM.—The Administrator shall allocate not more than ⅔ of the emission allowances described in paragraph (1) to States, based on proposals submitted by States to conduct programs under which each State shall—

''(A) use the value of the emission allowances to establish a State revolving loan fund to provide loans to owners of nonindustrial private forest land in the State to carry out forest and forest soil carbon sequestration activities that will achieve the purposes specified in paragraph (2)(B); and

''(B) for 2010 and each year thereafter, contribute to the program of the State an amount equal to 25 percent of the value of the emission allowances received under this paragraph for the year in cash, in-kind services, or technical assistance.

''(4) USE OF EMISSION ALLOWANCES.—An entity that receives an allocation of emission allowances under this subsection may use the proceeds from the sale or other transfer of the emission allowances only for the purpose of carrying out activities described in this subsection.

''(5) RECOMMENDATIONS CONCERNING CARBON DIOXIDE EMISSION ALLOWANCES.—

''(A) IN GENERAL.—Not later than 4 years after the date of enactment of this title, the Administrator, in consultation with the Secretary of Agriculture, shall submit to Congress recommendations for establishing a system under which entities that receive grants or loans under this section may be allocated carbon dioxide emission allowances created by section 705(a) for incremental carbon sequestration in forests, agricultural soils, rangeland, or grassland.

''(B) GUIDELINES.—The recommendations shall include recommendations for development, reporting, monitoring, and verification guidelines for quantifying net carbon sequestration from land use projects that address the elements specified in paragraph (1)(A).

''(f) ALLOCATION TO ENCOURAGE GEOLOGICAL CARBON SEQUESTRATION.—

''(1) IN GENERAL.—For 2009 and each year thereafter, the Administrator shall allocate not more than 1.5 percent of the carbon dioxide emission allowances created by section 705(a) to entities that carry out geological sequestration of carbon dioxide produced by an electric generating facility in accordance with requirements established by the Administrator—

''(A) to ensure the permanence of the sequestration; and

''(B) to ensure that the sequestration will not cause or contribute to significant adverse effects on the environment.

''(2) NUMBER OF EMISSION ALLOWANCES.—For 2009 and each year thereafter, the Administrator shall allocate to each entity described in paragraph (1) a number of emission allowances that is equal to the number of tons of carbon dioxide produced by the electric generating facility during the previous year that is geologically sequestered as described in paragraph (1).

''(3) USE OF EMISSION ALLOWANCES.—An entity that receives an allocation of emission allowances under this subsection may use the proceeds from the sale or other transfer of the emission allowances only for the purpose of carrying out activities described in this subsection.

''SEC. 708. MERCURY EMISSION LIMITATIONS.

''(a) IN GENERAL.—

''(1) REGULATIONS.—

''(A) IN GENERAL.—Not later than 1 year after the date of enactment of this title, the Administrator shall promulgate regulations to establish emission limitations for mercury emissions by coal-fired electricity generating facilities.

''(B) NO EXCEEDANCE OF NATIONAL LIMITATION.—The regulations shall ensure that the national limitation for mercury emissions from each coal-fired electricity generating facility established under section 704(a)(4) is not exceeded.

''(C) EMISSION LIMITATIONS FOR 2008 AND THEREAFTER.—In carrying out subparagraph (A), for 2008 and each year thereafter, the Administrator shall not—

''(i) subject to subsections (e) and (f) of section 112, establish limitations on emissions of mercury from coal-fired electricity generating facilities that allow emissions in excess of 2.48 grams of mercury per 1000 megawatt hours; or

''(ii) differentiate between facilities that burn different types of coal.

''(2) ANNUAL REVIEW AND DETERMINATION.—

''(A) IN GENERAL.—Not later than April 1 of each year, the Administrator shall—

''(i) review the total mercury emissions during the 2 previous years from electricity generating facilities located in all States; and

''(ii) determine whether, during the 2 previous years, the total mercury emissions from facilities described in clause (i) exceeded the national limitation for mercury emissions established under section 704(a)(4).

''(B) EXCEEDANCE OF NATIONAL LIMITATION.—If the Administrator determines under subparagraph (A)(ii) that, during the 2 previous years, the total mercury emissions from facilities described in subparagraph (A)(i) exceeded the national limitation for mercury emissions established under section 704(a)(4), the Administrator shall, not later than 1 year after the date of the determination, revise the regulations promulgated under paragraph (1) to reduce the emission rates specified in the regulations as necessary to ensure that the national limitation for mercury emissions is not exceeded in any future year.

''(3) COMPLIANCE FLEXIBILITY.—

''(A) IN GENERAL.—Each coal-fired electricity generating facility subject to an emission limitation under this section shall be in compliance with that limitation if that limitation is greater than or equal to the quotient obtained by dividing—

''(i) the total mercury emissions of the coal-fired electricity generating facility during each 30-day period; by

''(ii) the quantity of electricity generated by the coal-fired electricity generating facility during that period.

''(B) MORE THAN 1 UNIT AT A FACILITY.—In any case in which more than 1 coal-fired electricity generating unit at a coal-fired electricity generating facility subject to an emission limitation under this section was operated in 1999 under common ownership or control, compliance with the emission limitation may be determined by averaging the emission rates of all coal-fired electricity generating units at the electricity generating facility during each 30-day period.

''(b) PREVENTION OF RE-RELEASE.—

''(1) REGULATIONS.—Not later than January 1, 2005, the Administrator shall promulgate regulations to ensure that any mercury captured or recovered by emission controls installed at an electricity generating facility is not re-released into the environment.

''(2) REQUIRED ELEMENTS.—The regulations shall require—

''(A) daily covers on all active waste disposal units, and permanent covers on all inactive waste disposal units, to prevent the release of mercury into the air;

''(B) monitoring of groundwater to ensure that mercury or mercury compounds do not migrate from the waste disposal unit;

''(C) waste disposal siting requirements and cleanup requirements to protect groundwater and surface water resources;

''(D) elimination of agricultural application of coal combustion wastes; and

''(E) appropriate limitations on mercury emissions from sources or processes that reprocess or use coal combustion waste, including manufacturers of wallboard and cement.

''SEC. 709. OTHER HAZARDOUS AIR POLLUTANTS.

''(a) IN GENERAL.—Not later than January 1, 2004, the Administrator shall issue to owners and operators of coal-fired electricity generating facilities requests for information under section 114 that are of sufficient scope to generate data sufficient to support issuance of standards under section 112(d) for hazardous air pollutants other than mercury emitted by coal-fired electricity generating facilities.

''(b) DEADLINE FOR SUBMISSION OF REQUESTED INFORMATION.—The Administrator shall require each recipient of a request for information described in subsection (a) to submit the requested data not later than 180 days after the date of the request.

''(c) PROMULGATION OF EMISSION STANDARDS.—The Administrator shall—

''(1) not later than January 1, 2005, propose emission standards under section 112(d) for hazardous air pollutants other than mercury; and

''(2) not later than January 1, 2006, promulgate emission standards under section 112(d) for hazardous air pollutants other than mercury.

''(d) PROHIBITION ON EXCESS EMISSIONS.—It shall be unlawful for an electricity generating facility subject to standards for hazardous air pollutants other than mercury promulgated under subsection (c) to emit, after December 31, 2007, any such pollutant in excess of the standards.

''(e) EFFECT ON OTHER LAW.—Nothing in this section or section 708 affects any requirement of subsection (e), (f)(2), or (n)(1)(A) of section 112, except that the emission limitations established by regulations promulgated under this section shall be deemed to represent the maximum achievable control technology for mercury emissions from electricity generating units under section 112(d).

''SEC. 710. EFFECT OF FAILURE TO PROMULGATE REGULATIONS.

''If the Administrator fails to promulgate regulations to implement and enforce the limitations specified in section 704—

''(1)(A) each electricity generating facility shall achieve, not later than January 1, 2009, an annual quantity of emissions that is less than or equal to—

''(i) in the case of nitrogen oxides, 15 percent of the annual emissions by a similar electricity generating facility that has no controls for emissions of nitrogen oxides; and

''(ii) in the case of carbon dioxide, 75 percent of the annual emissions by a similar electricity generating facility that has no controls for emissions of carbon dioxide; and

''(B) each electricity generating facility that does not use natural gas as the primary combustion fuel shall achieve, not later than January 1, 2009, an annual quantity of emissions that is less than or equal to—

''(i) in the case of sulfur dioxide, 5 percent of the annual emissions by a similar electricity generating facility that has no controls for emissions of sulfur dioxide; and

''(ii) in the case of mercury, 10 percent of the annual emissions by a similar electricity generating facility that has no controls included specifically for the purpose of controlling emissions of mercury; and

''(2) the applicable permit under this Act for each electricity generating facility shall be deemed to incorporate a requirement for achievement of the reduced levels of emissions specified in paragraph (1).

''SEC. 711. PROHIBITIONS.

''It shall be unlawful—

''(1) for the owner or operator of any electricity generating facility—

''(A) to operate the electricity generating facility in noncompliance with the requirements of this title (including any regulations implementing this title);

''(B) to fail to submit by the required date any emission allowances, or pay any penalty, for which the owner or operator is liable under section 705;

''(C) to fail to provide and comply with any plan to offset excess emissions required under section 705(f); or

''(D) to emit mercury in excess of the emission limitations established under section 708; or

''(2) for any person to hold, use, or transfer any emission allowance allocated under this title except in accordance with regulations promulgated by the Administrator.

''SEC. 712. MODERNIZATION OF ELECTRICITY GENERATING FACILITIES.

''(a) IN GENERAL.—Beginning on the later of January 1, 2014, or the date that is 40 years after the date on which the electricity generating facility commences operation, each electricity generating facility shall be subject to emission limitations reflecting the application of best available control technology on a new major source of a similar size and type (as determined by the Administrator) as determined in accordance with the procedures specified in part C of title I.

''(b) ADDITIONAL REQUIREMENTS.—The requirements of this section shall be in addition to the other requirements of this title.

''SEC. 713. RELATIONSHIP TO OTHER LAW.

''(a) IN GENERAL.—Except as expressly provided in this title, nothing in this title—

''(1) limits or otherwise affects the application of any other provision of this Act; or

''(2) precludes a State from adopting and enforcing any requirement for the control of emissions of air pollutants that is more stringent than the requirements imposed under this title.

''(b) REGIONAL SEASONAL EMISSION CONTROLS.—Nothing in this title affects any regional seasonal emission control for nitrogen oxides established by the Administrator or a State under title I.''.

(b) CONFORMING AMENDMENT.—Section 412(a) of the Clean Air Act (42 U.S.C. 7651k(a)) is amended in the first sentence by striking ''opacity'' and inserting ''mercury, opacity,''.

SEC. 3. SAVINGS CLAUSE.

Section 193 of the Clean Air Act (42 U.S.C. 7515) is amended by striking ''date of the enactment of the Clean Air Act Amendments of 1990'' each place it appears and inserting ''date of enactment of the Clean Power Act of 2003''.

SEC. 4. ACID PRECIPITATION RESEARCH PROGRAM.

Section 103(j) of the Clean Air Act (42 U.S.C. 7403(j)) is amended—

(1) in paragraph (3)—

(A) in subparagraph (F)(i), by striking ''effects; and'' and inserting ''effects, including an assessment of—

''(I) acid-neutralizing capacity; and

''(II) changes in the number of water bodies in the sensitive ecosystems referred to in subparagraph (G)(ii) with an acid-neutralizing capacity greater than zero; and''; and

(B) by adding at the end the following:

''(G) SENSITIVE ECOSYSTEMS.—

''(i) IN GENERAL.—Beginning in 2005, and every 4 years thereafter, the report under subparagraph (E) shall include—

''(I) an identification of environmental objectives necessary to be achieved (and related indicators to be used in measuring achievement of the objectives) to adequately protect and restore sensitive ecosystems; and

''(II) an assessment of the status and trends of the environmental objectives and indicators identified in previous reports under this paragraph.

''(ii) SENSITIVE ECOSYSTEMS TO BE ADDRESSED.—Sensitive ecosystems to be addressed under clause (i) include—

''(I) the Adirondack Mountains, mid-Appalachian Mountains, Rocky Mountains, and southern Blue Ridge Mountains;

''(II) the Great Lakes, Lake Champlain, Long Island Sound, and the Chesapeake Bay; and

''(III) other sensitive ecosystems, as determined by the Administrator.

''(H) ACID DEPOSITION STANDARDS.—Beginning in 2005, and every 4 years thereafter, the report under subparagraph (E) shall include a revision of the report under section 404 of Public Law 101–549 (42 U.S.C. 7651 note) that includes a reassessment of the health and chemistry of the lakes and streams that were subjects of the original report under that section.''; and

(2) by adding at the end the following:

''(4) PROTECTION OF SENSITIVE ECOSYSTEMS.—

''(A) DETERMINATION.—Not later than December 31, 2011, the Administrator, taking into consideration the findings and recommendations of the report revisions under paragraph (3)(H), shall determine whether emission reductions under titles IV and VII are sufficient to—

''(i) achieve the necessary reductions identified under paragraph (3)(F); and

''(ii) ensure achievement of the environmental objectives identified under paragraph (3)(G).

''(B) REGULATIONS.—

''(i) IN GENERAL.—Not later than 2 years after the Administrator makes a determination under subparagraph (A) that emission reductions are not sufficient, the Administrator shall promulgate regulations to protect the sensitive ecosystems referred to in paragraph (3)(G)(ii).

''(ii) CONTENTS.—Regulations under clause (i) shall include modifications to—

''(I) provisions relating to nitrogen oxide and sulfur dioxide emission reductions;

''(II) provisions relating to allocations of nitrogen oxide and sulfur dioxide allowances; and

''(III) such other provisions as the Administrator determines to be necessary.''.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS FOR DEPOSITION MONITORING.

(a) OPERATIONAL SUPPORT.—In addition to amounts made available under any other law, there are authorized to be appropriated for each of fiscal years 2004 through 2013—

(1) for operational support of the National Atmospheric Deposition Program National Trends Network—

(A) $2,000,000 to the United States Geological Survey;

(B) $600,000 to the Environmental Protection Agency;

(C) $600,000 to the National Park Service; and

(D) $400,000 to the Forest Service;

(2) for operational support of the National Atmospheric Deposition Program Mercury Deposition Network—

(A) $400,000 to the Environmental Protection Agency;

(B) $400,000 to the United States Geological Survey;

(C) $100,000 to the National Oceanic and Atmospheric Administration; and

(D) $100,000 to the National Park Service;

(3) for the National Atmospheric Deposition Program Atmospheric Integrated Research Monitoring Network $1,500,000 to the National Oceanic and Atmospheric Administration;

(4) for the Clean Air Status and Trends Network $5,000,000 to the Environmental Protection Agency; and

(5) for the Temporally Integrated Monitoring of Ecosystems and Long-Term Monitoring Program $2,500,000 to the Environmental Protection Agency.

(b) MODERNIZATION.—In addition to amounts made available under any other law, there are authorized to be appropriated—

(1) for equipment and site modernization of the National Atmospheric Deposition Program National Trends Network $6,000,000 to the Environmental Protection Agency;

(2) for equipment and site modernization and network expansion of the National Atmospheric Deposition Program Mercury Deposition Network $2,000,000 to the Environmental Protection Agency;

(3) for equipment and site modernization and network expansion of the National Atmospheric Deposition Program Atmospheric Integrated Research Monitoring Network $1,000,000 to the National Oceanic and Atmospheric Administration; and

(4) for equipment and site modernization and network expansion of the Clean Air Status and Trends Network $4,600,000 to the Environmental Protection Agency.

(c) AVAILABILITY OF AMOUNTS.—Each of the amounts appropriated under subsection (b) shall remain available until expended.

SEC. 6. TECHNICAL AMENDMENTS.

Title IV of the Clean Air Act (relating to noise pollution) (42 U.S.C. 7641 et seq.)—

(1) is amended by redesignating sections 401 through 403 as sections 801 through 803, respectively; and

(2) is redesignated as title VIII and moved to appear at the end of that Act.

SUMMARY OF THE CLEAN POWER ACT OF 2003

Amends the Clean Air Act with a new title VII—Electric Generation Emission Reductions.

Caps—Sets annual emissions caps for three pollutants that apply beginning in 2009: SO_x—275,000 tons in western region; 1,975,000 tons in eastern region; NO_x—1,510,000 tons; and CO_2—2,050,000,000 tons.

Mercury emissions are capped in 2008 at a rate that results in 5 tons annually

The Administrator is authorized to reduce these caps if the Administrator determines that they are not reasonably anticipated to protect public health or welfare or the environment. In addition, the Administrator is authorized to limit the emissions from an electric generating facility (EGF), if she determines that its emissions may reasonably be anticipated to cause or contribute to a significant adverse impact on an area.

Modernization—By the later of 2014, or 40 years after commencing operation, each EGF must achieve emission limitations reflecting the best available control technology applied to a new major source of the same generating capacity.

Allownace Creation & Trading—Allowances are created representing each of the caps' tons and may be traded, except for

mercury. They will have unique serial numbers to identify them. Western and Eastern SO_x allowances may be traded between regions, but extra-regional allowances can't be used to meet an EGF's obligations. Trading in emission allowances with other sectors is prohibited, except if the allowances are for carbon dioxide and are created by a cap on another non-electricity sector.

Allowance Submission to Meet Caps—Three months after the end of 2009, and every year thereafter, each electric generating facility that generates 15 MW (or the thermal equivalent) or greater from a fossil fuel combustion unit or combination of units that sells electricity must give to EPA at last the amount of allowances that represent the tons they emitted in the previous year. Allowances created and banked under Title IV (acid rain—SO_x) or through Title I regulations (ozone—NO_x), may be used at the rate of 4:1. However, if allowances are banked because a facility meets NSPS in the period 2001–2008, they may be used 1:1 for compliance with Clean Power Act. Allowances under the Clean Power Act may be banked.

Emissions Emission Penalties—By 2007 and every 3 years thereafter, each state will identify the electric generating facilities in that state and in other states that are significantly contributing to non-attainment of an ozone naaqs in that state. Beginning in 2009, the Administrator is authorized, upon a petition from a state or a citizen demonstrating that control measures are inadequate to prevent that significant contribution, to require that each identified and inadequately controlled facility submit 3 nitrogen oxide emission allowances for each ton of nitrogen oxides emitted by that electricity generating facility during the period of an ozone naaqs exceedance that occurred in the previous year.

An EGF that fails to submit enough allowances to EPA will be required to submit additional emission allowances as a penalty. This is similar to section 412 of CAA. For SO_x, NO_x, and CO_2, the penalty is 3 times the excess emissions or shortfall in allowances multiplied by the average annual market price of the allowance. For mercury, the penalty is 3 times the excess emissions and the average cost of mercury controls.

Mercury Emissions Limitation—Starting in 2008, mercury emissions are limited to no greater than 2.48 grams of mercury per 1,000 megawatt hours. This is equivalent to reducing aggregate emissions of mercury from EGFs by 90 percent from today's levels, and the emission limitation imposed are deemed to be maximum achievable control technology (MACT) for mercury. In the event that aggregate emissions from EGFs go above the 5 ton cap, then EPA must adjust the limitations downward. EGFs may average their emissions over 30-day periods and between units at a single facility. EPA must promulgate regulations to prevent the rerelease of mercury into the environment from coal combustion waste, i.e. fly ash.

Non-Mercury Haps Rulemaking—EPA must proposed MACT regulations to cover non-mercury hazardous air pollutants from EGFs by 2005 and enforce them by 2008.

Monitoring—Coal-fired EGFs above 50MW will be required to conduct ambient air quality monitoring within a 30-mile radius for hazardous air pollutants and sulfur dioxide emitted by the facility. In general, EGFs must conduct continuous emission monitoring.

Allowance Allocation.

Allowances representing the tons of pollution in the emission caps for SO_x, NO_x, and CO_2, are distributed annually every year by the Administrator in 2009 to five main categories: consumers/households, transition assistance, renewable energy-efficiency-cleaner energy, carbon sequestration, and existing units.

Consumers/Households—After the allowances described below are distributed, the Administration will have a minimum of 62.5% of the total allowances to distribute to households. EPA will arrange for a trustee to receive these allowances and to convey their fair market value to households based on the number of persons in the household and the ratio of the household's state's residential electricity consumption to the national residential electricity consumption.

Transition Assistance—EPA will arrange for a trustee to receive 6% of the allowance in 2009 (this declines over 10 years by increments of .5 to 1.5% in 2018), who must then turn around and obtain fair market value for those allowances and convey:

80% of that value to dislocated workers and communities that experience a disproportionate impact due to the emission reductions required by the bill, and

20% to producers of electricity intensive products (like aluminum) based on their share of total output multiplied by the average amount of power used by most efficient production process multiplied by the national average emission rate of the covered pollutants from fossil fuel generating facilities in tons per MW.

Renewable Energy Generating Units, Efficiency Projects and Clean Energy Sources—EPA will allocate no more than 20% of the total allowances to:

(1) renewable electricity generating units based on their output multiplied by the national average emission rate of the covered pollutants from fossil fuel generating facilities in tons per MWh. So, for each avoided ton of pollution per unit of output, the renewable generator will get an allowance equal to one ton.

(2) owners and operators of energy efficient buildings, producers of energy efficient products and entities that carry out energy efficiency projects, based on the tons of pollution that would have been emitted at the national average rate for fossil fuel electricity generation or natural gas combustion for each megawatt-hour or unit of natural gas saved.

(3) cleaner fossil fuel EGFs, based on their output multiplied by half of the tons of pollution that would otherwise have been emitted at the national average rate for fossil fuel electricity generation or natural gas combustion for the same amount of output.

(4) combined heat and power facilities, based on their Btus of thermal energy output multiplied by the tons of pollution that would otherwise have been emitted in tons per Btu at a fossil fuel EGF for the same amount of output.

Carbon Sequestration—EPA will allocate up to .075% of the total carbon dioxide allowances to states for developing biological carbon sequestration inventories and for establishing state revolving loan funds for loans to owners of nonindustrial private forest lands to carry out carbon sequestration. EPW will allocate up to 1.5% of the total carbon dioxide allowances to entities conducting geologic carbon sequestration, based on the national average rate of carbon dioxide emissions from EGFs per ton sequestered.

Existing Facilities. EPA will allocate 10% of the allowances in 2009 (declining 1 point annually over time until it reaches 1% in 2018) to EGFs based on share of 2000 output.

Acid Precipitation and Sensitive ecosystem research—EPA must expand the report completed every four years on the reduction in acid deposition rates necessary to prevent adverse ecological effects by including consideration of changes in lakes and streams acid neutralizing capacity. In addition, EPA must submit a report every four years on sensitive ecosystems, including the Adirondacks, the mid-Appalachian Mountains, the Great Lakes, Lake Champlain, the Rocky Mountains, and the southern Blue Ridge Mountains. If necessary, EPA is authorized to promulgate regulations in 2012 to protect them.

Failure of EPA to Issue Regs—EPA must promulgate regulations by 2009 to implement and enforce these emission limitations or each EGF must achieve specific emission performance at each facility relative to an uncontrolled source—95% for sulfur dioxide, 85% for nitrogen oxides, 25% for carbon dioxide, and 90% for mercury.

Small Generator Inventory—EPA will conduct an inventory of emissions from Electric Generating Facilities (EGFs) with generating capacity less than 15MW. Based on that inventory, EPA will annually subtract those emissions from the total amount of allowances allocated prior to distribution each year.

Savings Clause—Nothing in the Clean Power Act precludes a State from adopting and enforcing any requirement for the control of emissions of air pollutants that is more stringent than the requirements imposed under this title.

Ms. COLLINS. Mr. President, I am pleased to join Senator JEFFORDS in introducing the Clean Power Act of 2003. This bill will remove the loophole that has allowed the dirtiest, most polluting power plants in the Nation to escape significant pollution controls for more than 30 years.

Maine is one of the most beautiful and pristine States in the Nation. It is also one of the most environmentally responsible States in the Nation. Maine has fewer emissions of the pollutants that cause smog and acid rain than all but a handful of states. Maine also has one of the lowest emissions of carbon dioxide nationwide.

Unfortunately, despite the collective environmental consciousness of both the citizens and industries of Maine, Maine still suffers from air pollution. Every lake, river, and stream in Maine is subject to a state mercury advisory that warns pregnant women and young children to limit consumption of fish caught in those waters. Even Acadia National Park, one of the most beautiful national parks in the Nation, experiences days in which visibility is obscured by smog.

Where does all this pollution come from? A large part of it comes from a relatively small number of mostly coal-fired power plants that use loopholes to escape the provisions of the Clean Air Act. Coal-fired power plants are the single largest source of air pollution, mercury contamination, and greenhouse gas emissions in the nation. A single coal-fired power plant can emit more of the pollutants that cause smog and acid rain than all of the cars, factories, and businesses in Maine combined.

As the easternmost State in the Nation, Maine is downwind of almost all power plants in the United States. Many of the pollutants emitted by these power plants—mercury, sulfur dioxide, nitrogen oxides, and carbon dioxide—end up in or over Maine. Airborne mercury falls into our lakes and

streams, contaminating freshwater fish and threatening our people's health. Carbon dioxide is causing climate change that threatens to alter Maine's delicate ecological balance. Sulfur dioxide and nitrogen oxides come to Maine in the form of acid rain and smog that damage the health of our people and the health of our environment.

A single power plant can emit nearly a ton of mercury in a single year. That's equivalent to incinerating over 1 million mercury thermometers and is enough to contaminate millions of acres of freshwater lakes. In contrast, Maine has zero power plant emissions of mercury. This bill would reduce mercury emissions from power plants by 90 percent by 2009.

I am pleased that there has been so much recognition recently of the problems that so many States are facing on clean air. President Bush has proposed a ''Clear Skies'' initiative that will reduce emissions of mercury, sulfur dioxide, and nitrogen oxides. Last year, Senators CARPER, CHAFEE, BREAUX, and BAUCUS also introduced legislation that would reduce these pollutants, as well as carbon dioxide.

There are important differences between these proposals. The Jeffords/Collins bill does more to reduce smog, acid rain, mercury pollution, and global warming than any other bill. Our bill provides more public health and environmental benefits than any other serious proposal, and it provides the benefits sooner. However, any step which reduces air pollution is a step in the right direction. Our parks and our people have waited far too long for clean air.

I think virtually everyone agrees that we need to reduce power plant pollution. I look forward to working with the Administration and my colleagues on both sides of the aisle to provide cleaner air.

Ms. SNOWE. Mr. President, I rise today to cosponsor Senator JEFFORDS' bill—as I did in the 106th and 107th Congresses—as I am dedicated to reducing power plant emissions that cause some of the Nation's—and Maine's—most serious public health and environmental problems.

For too many years, coal-burning power plants exempt from emissions standards under the Clean Air Act have created massive pollution problems for the Northeast because whatever spews out of their smokestacks in the Midwest, blows into the Northeast, including my State of Maine, giving it the dubious distinction of being at the ''end of the tailpipe'', so to speak.

The Jeffords' legislation calls for reductions of power plant emissions for pollutants that cause smog, soot, respiratory disease; acid rain that kills our forests; mercury that contaminates our lakes, rivers and streams; and climate variabilities that cause severe shifts in our weather patterns. Maine currently leads the Nation in asthma cases per capita, which is not a surprise, but which it can do little about when nearly 80 percent of the State's dirty air is not of their own making but is transported by winds blowing in from the Midwest and Southeast.

The bill will dramatically cut aggregate power plant emissions by 2009 of the four major power plant pollutants: nitrogen oxides NO_X, the primary cause of smog, by 71 percent from 2000 levels; sulfur dioxide, SO_2, that causes acid rain and respiratory disease, by 81 percent from 2000 levels; mercury, Hg, which poisons our lakes and rivers, causing fish to be unfit for human consumption, through a 90 percent reduction by 2008; and carbon dioxide, CO_2, the greenhouse gas most directly linked to global climate variabilities, by 21 percent from 2000 levels. Of note, the NO_X, SO_2, and mercury reductions are set at levels that are known to be cost effective with available technology.

The bill will also eliminate the outdated coal-burning power plants that were grandfathered in the Clean Air Act unless they apply the best available pollution control technology by their 40th birthday or 2014, whichever is later. The thinking for the exemption in the Clean Air Act was based, at the time, on the assumption that the plants would not stay on line much longer. However, as energy has gotten more expensive, companies are keeping these older, dirtier plants up and running.

Furthermore, just as the Clean Air Act already provides tradable allowances for sulfur dioxide that causes acid rain, the Jeffords' legislation also allows for tradable allowances to control emissions for three other pollutants—NO_X, SO_X, CO_2,—by using market-oriented mechanisms to meet emissions reduction requirements.

The tradable allowances would be distributed to five main categories, including 63 percent or more to households; six percent for transition assistance to affected communities and industries, which will decline over time; up to 20 percent to renewable energy generation, efficiency projects and clean energy sources, based on avoided pollution; 10 percent to existing electric generating facilities based on 2000 output; and up to 1.5 percent of the carbon dioxide allowances for biological and geological carbon sequestration. Of note, trading will not be allowed if it enables a power plant to pollute at a level that damages public health or the environment.

I realize that the Administration's Clear Skies Initiative does not address carbon dioxide as a pollutant nor does it address emissions reductions for CO_2. While I recognize that the pollutants listed under the Clear Air Act have been to achieve healthier air for humans by cutting back on smog and soot, and also for mercury contamination, I believe it is long past due that carbon dioxide be recognized as a pollutant that is harming the health of the planet.

I am supporting the goal of CO_2 emissions reduction in the Jeffords' bill in the hopes that the bill will be a rallying point to further the debate for reducing CO_2 and at the same time, get our air cleaner on a quicker timeframe. In particular, Congress needs to develop a market mechanism approach for CO_2 emissions trading—such as we now have for acid rain—to allow U.S. industries the flexibility and certainty to reduce CO_2 emissions without the threat of higher energy production costs in the future that will be passed on to the consumer. I will continue to work with my colleagues, the White House and representatives from various industry groups, and environmental organizations to achieve this goal.

The bottom line is that we have the opportunity to raise the bar for cleaner domestic energy production in an economically effective manner. Solutions exist in available and developing technologies, and most of all in the entrepreneurial spirit of the American people who want a cleaner and healthier environment, including those in Maine who want to ensure that the State's pristine lakes and coast will remain clean and our forests healthy for generations to come. States like Maine are leading the way in trying to reduce CO_2 emissions—and the Jeffords' legislation sends a powerful message to those who would pollute our air: your days are numbered.

I am optimistic that the Congress can come together with the President, industry and all those who want cleaner, healthier air to create a cohesive policy that is best suited for our nation, so I urge my colleagues to support the Jeffords' legislation.

By Mr. ROCKEFELLER:

S. 367. A bill to amend part A of title IV of the Social Security Act to reauthorize and improve the temporary assistance to needy families program, and for other purposes; to the Committee on Finance.

Mr. ROCKEFELLER. Mr. President, I am proud to re-introduce a bill that reauthorizes the landmark welfare reform legislation passed in 1996. It is basically the same bill as I introduced in the last Congress and it is designed to allow States to continue the important work to promote work and personal responsibility. This reauthorization bill is designed to allow States to continue to provide the flexible initiatives that have reduced national welfare caseloads by over 50 percent and moved millions of Americans from welfare to work.

Welfare reform was a bold experiment to dramatically change a major social program. In 1996, Congress ended the entitlement of eligible families with children to cash aid. The results five years later are impressive. Over two-thirds of the people who are leaving the welfare rolls have left for work.

Seven years ago, we agreed that the bipartisan goal of welfare reform should be to promote work and to protect children. We stood here together,

on unchartered ground, and endorsed significant policy changes that we believed would help families gain independence and economic self-sufficiency, while protecting the children. States began to revise welfare service delivery with guidance based on the new reforms. Each State designed and implemented programs that were unique and specific to their populations. While the results have been mixed, I believe that encouraging progress has been made. The challenge this year will be to continue to build on our foundation, and be sensitive to the current economic situation and the fiscal crisis States face today.

When we started welfare reform, we had a strong economy. Now, States are struggling and most of their reserves are gone. I believe we can continue the progress of welfare reform, but I strongly believe we must provide the key investments that help welfare parents make a successful transition from welfare to work, including increasing child care funding.

In West Virginia, welfare reform has brought bold changes. Parents on welfare get extra support as they face new responsibilities and obligations to make the transition from welfare to jobs. In 2001, I hosted a roundtable discussion to meet with individual West Virginians who were undergoing major life transitions. They told me that they were proud to be working, but that it was often still a struggle to make ends meet and do the best for their children. The goal of this legislation is to help those parents, and millions more, to promote the well-being of their children, even as they work.

Today, I am introducing the Personal Responsibility and Work Opportunity Reconciliation Act Amendments of 2003. States need help to continue making progress. We should continue to build on this foundation, and not reduce state flexibility. It is essential that we continue welfare reform, not unravel it, or restructure it.

This bill acknowledges that we must keep the focus on work, by both requiring and rewarding work. To ensure a real focus on helping parents leave welfare rolls for a job, this legislation gradually replaces the caseload reduction credit with an employment credit, designed by Senator LINCOLN of Arkansas and Congressman LEVIN of Michigan. Under this important provision, States will only get a bonus toward their work participation requirement if parents move from welfare to a job. This credit will acknowledge the dignity of all work by providing a bonus for parents who get jobs, both full and part-time. A mother who has never worked in her life and then gets a part-time job has achieved a true accomplishment, and that deserves recognition. It is also the first step toward independence. It is an empowering approach to promoting work and sends the proper message to families who are striving to become self sufficient. I am pleased to incorporate their proposal into my bill, and I look forward to working with them closely throughout the welfare debates during this Congress to develop an employment credit that truly rewards work.

At this point, with a soft economy, I believe it is unwise to significantly change State TANF programs to impose drastically higher work participation rates requiring 40 hours per week of work and activities. Such changes, as suggested by the Administration, would double the work requirement for mothers with children under the age of 6, and that does not seem right. Increasing work requirement without new funding for child care, transportation, and job placement activities would be, plain and simple, an unfunded mandate. It could hinder state efforts to move parents into private sector jobs. It could undermine our progress.

State officials have testified before the Finance Committee that such changes would force states to restructure existing programs that are working and turn their focus away from those who need some assistance with child care or transportation, but are no longer dependent on a welfare check. We should not cut back on necessary child care and work supports for working families who are following the rules we set in 1996.

This comprehensive welfare reform bill makes the right investments. It invests $5.5 billion more in child care, which is the amount supported by the Finance Committee in a bipartisan vote last June.

This bill also increases funding for the basic TANF block grant by $2.5 billion because of state need. It provides full funding for the Social Services at $2.8 billion, which was promised to the states in 1996. My bill also would expand and increase the supplemental grants to help the states with high growth and high poverty deal with the challenges of welfare reform. With these new investments, states will be able to increase investment in the fundamental work supports like child care, transportation, and training, that help a parent succeed in moving from welfare to work. States would have flexibility in allocating the new resources, but I believe much of the funding can and will be directed into child care, which is a major priority.

This bill would continue the transitional Medicaid program so families can keep health care coverage for a year as they move from welfare to work. In 1996, I was proud to work with Senator BREAUX and the late Senator John Chafee to protect access to health care for such vulnerable families. I have incorporated Senator BREAUX's bipartisan bill to continue transitional Medicaid coverage, and I appreciate his leadership on this and other key issues. Our bill also gives states more flexibility and options to place parents in vocational training and English as a Second Language programs, so parents can get real jobs. In recognition of Maine's success with the Parents as Scholar program, States have the option to follow the Maine model for 5 percent of their caseload to combine work and education.

The bill also invests $200 million to create BusinessLink Grants, competitive grants to support public and private partnerships to help parents get jobs. The Welfare-to-Work Partnership is just one example of how nonprofits working with business leaders can make a real difference. The Partnership includes over 20,000 businesses that have provided more than 1 million jobs to parents moving from welfare to work. I have met with the board members of this group, and we should encourage such partnerships. I know that other groups, like the Salvation Army and Good Will, are doing important work on providing transitional job opportunities, and these organizations would be eligible for grants as well.

A job is the first step, but for welfare parents to make a successful transition to independence, they need a range of supports. To achieve this goal, the bill will create Pathways to Self-Sufficiency Grants to improve the support network for parents. These grants are intended to provide incentives and support to TANF caseworkers and nonprofit organizations to help improve the comprehensive network of supports for working families, including Medicaid, CHIP, child care, EITC, and a range of services. Working mothers deserve to know what type of support will be available so that they do not slip back into welfare.

Work is fundamental, but we also need to be concerned about important aspects of the lives of families and children. This legislation creates a Family Formation Fund to encourage healthy families, reduce teenage pregnancy, and improve child support and participation of parents in children's lives. The bill seeks to end certain discrimination and harsh rules for two-parent families in the current system. If our goal is to support marriage, we should not penalize married couples.

Our legislation also makes a simple, but important change. Under the current TANF program, each welfare parent has an Individual Responsibility Plan that serves as an assessment and work plan. In addition to having a responsibility to work, parents have a responsibility to protect their children's well-being. To emphasize this fundamental point, this bill adds language directing states to incorporate the concept of a child's well-being into each parent's Individual Responsibility Plan. States have great flexibility, but it is important to send a clear message that one of a parent's responsibilities is the well-being of their children.

This legislation builds on the foundation of the 1996 Personal Responsibility and Work Opportunity Reconciliation Act. My hope is that this framework will help promote bipartisan discussion about how we can make even more improvements in our welfare system,

while maintaining our partnership with the States, particularly at this time of severe fiscal problems in our States.

By Mr. McCAIN (for himself and Mr. GRAHAM of South Carolina):

S. 368. A bill to amend title X of the Social Security Act to include additional information in social security account statements; to the Committee on Finance.

Mr. MCCAIN. Mr. President, today, there is a greater awareness of the precarious financial condition confronting our Nation's Social Security system. Unfortunately, partisanship has controlled the debate on reform, polarizing and paralyzing Congress, while the fate of Social Security has become more grim and the consequent need for reform has become more urgent.

It is now time for us to come together to reform and revitalize this system, so that Social Security will continue to benefit both the seniors of today and tomorrow. As elected officials, we have an obligation to ensure that Social Security benefits are paid as promised, without unfairly burdening the workers of today.

American workers deserve to know the true financial status of the Social Security program. Each individual should have the right to honest information, including the real value of their personal retirement benefits. Most Americans have little knowledge of the true financial status of Social Security because the current system does not provide them with practical, easy to understand information.

Today, Senator LINDSEY GRAHAM and I are introducing a bill that will require the inclusion of that practical information in annual Social Security statements sent to all taxpaying Americans. These statements will include straight forward information regarding the average rate of return workers can expect to receive from Social Security as compared to the amount of taxes an individual pays into the program, the amount Social Security receives in payroll, how much revenue is needed to give promised benefits to seniors, and the date when the program will no longer have sufficient funds to pay promised benefits. It is only fair and just to provide everyone with the true facts about how much they will pay in payroll taxes and what the limited return will be on their contributions.

We must talk straight to Americans about Social Security and begin working together in a bipartisan fashion to make the necessary changes to strengthen and save the Nation's retirement program for the seniors of today and tomorrow.

I ask unanimous consent that the text of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 368

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Straight Talk on Social Security Act of 2003''.

SEC. 2. MATERIAL TO BE INCLUDED IN SOCIAL SECURITY ACCOUNT STATEMENT.

Section 1143(a)(2) of the Social Security Act (42 U.S.C. 1320b–13(a)(2)) is amended—

(1) in subparagraph (C) by striking ''and'' at the end;

(2) in subparagraph (D) by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(E) a statement of the current social security tax rates applicable with respect to wages and self-employment income, including an indication of the combined total of such rates of employee and employer taxes with respect to wages; and

''(F)(i) as determined by the Chief Actuary of the Social Security Administration, a comparison of the total annual amount of social security tax inflows (including amounts appropriated under subsections (a) and (b) of section 201 of this Act and section 121(e) of the Social Security Amendments of 1983 (42 U.S.C. 401 note)) during the preceding calendar year to the total annual amount paid in benefits during such calendar year;

''(ii) as determined by such Chief Actuary—

''(I) a statement of whether the ratio of the inflows described in clause (i) for future calendar years to amounts paid for such calendar years is expected to result in a cash flow deficit,

''(II) the calendar year that is expected to be the year in which any such deficit will commence, and

''(III) the first calendar year in which funds in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund will cease to be sufficient to cover any such deficit;

''(iii) an explanation that states in substance—

''(I) that the Trust Fund balances reflect resources authorized by the Congress to pay future benefits, but they do not consist of real economic assets that can be used in the future to fund benefits, and that such balances are claims against the United States Treasury that, when redeemed, must be financed through increased taxes, public borrowing, benefit reduction, or elimination of other Federal expenditures,

''(II) that such benefits are established and maintained only to the extent the laws enacted by the Congress to govern such benefits so provide, and

''(III) that, under current law, inflows to the Trust Funds are at levels inadequate to ensure indefinitely the payment of benefits in full; and

''(iv) in simple and easily understood terms—

''(I) a representation of the rate of return that a typical taxpayer retiring at retirement age (as defined in section 216(l)) credited each year with average wages and self-employment income would receive on old-age insurance benefits as compared to the total amount of employer, employee, and self-employment contributions of such a taxpayer, as determined by such Chief Actuary for each cohort of workers born in each year beginning with 1925, which shall be set out in chart or graph form with an explanatory caption or legend, and

''(II) an explanation for the occurrence of past changes in such rate of return and for the possible occurrence of future changes in such rate of return.

The Comptroller General of the United States shall consult with the Chief Actuary to the extent the Chief Actuary determines necessary to meet the requirements of subparagraph (F).''.

By Mr. THOMAS:

S. 369. A bill to amend the Endangered species Act of 1973 to improve the processes for listing, recovery planning, and delisting, and for other purposes; to the Committee on Environment and Public Works.

Mr. THOMAS. Mr. President, I rise today to introduce the ''Listing and Delisting Reform Act of 2003.'' The Endangered Species Act has become one of the best examples of good intentions gone astray. Today, I am taking one small step toward injecting some common sense into what has become a regulatory nightmare. It is my intention to start making the law more effective for local landowners, public land managers, communities and State governments who truly hold the key to any successful effort to conserve species. My legislation seeks to improve the listing, recovery planning and delisting processes so that recovery, the goal of the act, is easier to achieve.

In Wyoming, we have seen first hand the need to revise the listing and delisting processes of the Endangered Species Act. Listing should be a purely scientific decision. Listing should be based on credible data that has been peer-reviewed. In 1998, the Preble's Meadow Jumping Mouse was listed in the State of Wyoming. The listing process for this mouse demonstrates how the system has gone haywire, devoid of good science. One of the more significant shortcomings regarding the handling of the Preble Mouse has been the confusion between the ''known range'' as opposed to the alleged ''historical range'' of the mouse. Historical data and current knowledge do not support the high, short-grass, semi-arid plains of southeastern Wyoming as part of the mouse's historical habitat range. The U.S. Fish and Wildlife Service has even admitted to uncertainties regarding taxonomic distinctions and ranges. further, the State was not properly notified causing counties, commissioners, and landowners all to be caught off guard. Such poor practices do not foster the types of partnerships that are required if meaningful species conservation is to occur. Clearly, changes to the Endangered Species Act are desperately needed.

Not far behind the mouse in Wyoming, was the black tailed prairie dog. Petitions to list the prairie dog were filed with the U.S. Fish and Wildlife Service. I've lived in Wyoming most of my life, and I've logged a lot of miles on the roads and highways in my State over the years. I can tell you from experience that there is no shortage of prairie dogs in Wyoming. Any farmer or rancher will concur with that opinion. This petition, and countless other actions throughout the country, makes it painfully clear that some folks are intent on completely eliminating activity on public lands, no matter what the cost to individuals or local communities that rely on the land for economic survival.

My legislation will require the Secretary of the Interior to use scientific

or commercial data that is empirical, field tested and peer-reviewed. Right now, it's basically a ''postage stamp'' petition: any person who wants to start a listing process may petition a species with little or no scientific support. This legislation prevents this absurd practice by establishing minimum requirements for a listing petition that includes an analysis of the status of the species, its range, population trends and threats. The petition must also be peer reviewed. In order to list a species, the Secretary must determine if sufficient biological information exists in the petition to support a recovery plan. Under my proposal, States are made active participants in the process and the general public is provided a more substantial role.

This legislation requires explicit planning and forethought with regard to conservation and recovery at the time the species is listed. Let me be clear about the intent of this requirement. I do not question the basic premise that some species require the protection of the Endangered Species Act. However, listing a species can cause hardship on a community. For that reason, it is critically important and only reasonable that every listing be supported by sound science. We should be sure of the need for a listing before we ask the members of our communities and private landowners to make sacrifices.

In Wyoming, I have found that with several listings, the Secretary of the Interior was unable to tell me what measures were required to achieve species recovery. The Secretary could not tell me what acts or omissions we could expect to face as a consequence of listing. How can this be, if the Secretary is fully apprized of the status of the species? Conversely, if the Secretary cannot clearly describe how to reverse threatening acts to a species so that we can achieve recovery, how can we be sure that the species is, in fact, threatened?

This ambiguity has caused much undue frustration to the people of Wyoming. If the Secretary believes that certain farming or ranching practices, or a private citizen's development of their own property is the cause for a listing, then the Secretary should identify those activities that have to be curtailed or changed. If the Secretary does not have enough information to indicate what activities should be restricted, then why list a species? Why open producers and others to the burden of over-zealous enforcement and even litigation without being able to achieve the goal of recovering the species?

This legislation is ultimately designed to improve the quality of information used to support a listing. If the Secretary knows enough to list a species, that person should know enough to tell us what will be required for recovery. That should be the case under current law, and that is all that this provision would require.

Additionally, we need to revise the end of the process, the de-listing procedure. Recovery should be the goal of the Endangered Species Act. Yet, it is virtually impossible to de-list a species. There is no certainty in the process, and the State who has all the responsibility for managing the species once it is off the list are not true partners in that process. Once the recovery plan is met, the species should be delisted.

Wyoming's experience with the Grizzly bear pinpoints some of the problems with the current de-listing process. The Interagency Grizzly Bear Committee set criteria for recovery and in the Yellowstone ecosystem, those targets have been met, but the bear has still not been removed from the list. We've been battling the U.S. Fish and Wildlife Service for years over this issue to no avail. Despite rebounded populations, we keep funneling money down a black hole.

The point is something needs to be done. People in Wyoming have grown weary of the Endangered Species Act and the efforts of a vocal minority to run roughshod over their lives and interests. It is imperative to the longevity of many species and our citizens in the West that we bring this Act to the snubbing post and gain control of the process. The changes I've suggested will have a significant affect on the quality of science, public participation, state involvement, speed in recovery and finally the delisting of a species. Species that truly need protection will be protected, but let's not lose sight of the real goal—recovery and delisting.

By Mr. DEWINE (for himself, Mrs. CLINTON, and Mr. REED).

S. 371. A bill to amend the Public Health Service Act to ensure an adequate supply of vaccines; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Mr. President, I rise today, along with my colleague from New York, Senator CLINTON, to introduce the Childhood Vaccine Supply Act—a bill that would help ensure that our nation's public health system has an adequate vaccine supply.

Vaccinations are critical in our efforts to keep our population, particularly children and the elderly, healthy. They are key in protecting the elderly from influenza during flu season or protecting children from contracting polio or the mumps. They—vaccinations, inoculations, immunizations, whatever you want to call them—also help lessen the threat of bacterial or viral infections and potential disease outbreaks.

Currently, it is recommended that children receive 12 routine vaccinations against preventable diseases. These vaccinations are given in a series of shots and booster shots by the age of two, with an additional four doses later in life. This ends up being about 16 to 20 doses of vaccines for children. Yet, just last year, over half of the vaccines children need were in short supply.

That shortage of vaccines was not acceptable, and we should do all we can to prevent any future shortage and do all we can to protect our kids from illness and disease. As a Senator, and more importantly, as a father of eight and grandfather of eight, nothing is more important to parents than the health and safety of our children.

While we are not currently experiencing a shortage, we know that the vaccine market is unstable and unpredictable. According to the Centers for Disease Control's National Immunization Program, there were several reasons for the shortages last year. The CDC concluded and posted on its website that the ''reasons for these shortages were multi-factorial and included companies leaving the vaccine market, manufacturing or production problems, and insufficient stockpiles.'' The CDC did as good a job as it possibly could, especially considering the vaccine shortages our nation faced last year. The agency's website posted information about shortages and released revised vaccine schedules to keep our public informed and knowledgeable about vaccination shortages.

But, even with the strong efforts of the CDC, we can work toward preventing a future vaccine shortage. We can work toward a more permanent solution. The bill I am introducing with my colleague from New York will go a long way to do just that.

The bill we are introducing today—the Childhood Vaccine Supply Act—would help bring some stability to our fragile vaccine supply. Unlike drug manufacturers, vaccine manufacturers do not have to give notice when they stop making a vaccine—whether the vaccine is withdrawn from the market intentionally or because the manufacturer is simply unable to continue making the vaccine. Essentially, these manufacturers leave the marketplace with no notice and no warning. Most doctors and hospitals—and more importantly parents and older adults—often have no idea that a vaccine is in short supply until they line up for a flu shot or go to the doctor for their child's immunizations.

Our bill would change this. It would require any manufacturer of a vaccine to give notice of discontinuance. By giving notice, the Centers for Disease Control, CDC, and the Food and Drug Administration, FDA, would be better able to ensure an adequate vaccine supply for our Nation's population. Additionally, our bill would require all drug and vaccine manufacturers to give notice when they withdraw from the market. This change would ensure that we have a better sense of who is making vaccines and drugs and would allow the CDC and FDA to monitor the manufacturer's production and release of vaccines. Let me explain why this is important.

Vaccines, or biological products, are difficult to develop and manufacture. They are more complex than drugs. Because of this, it takes longer for a biological product to reach the market.

For example, a pharmaceutical company that manufactured tetanus vaccine stopped producing it, leaving only one company to produce tetanus vaccine for the entire country. The remaining company increased production to accommodate all of the needs of the United States. Despite this, it still required about 11 months for the vaccine to be ready for release. In other words, it took 11 months for the company to ramp-up production to meet demand. Our bill would create a notification mechanism to capture those drugs and vaccines leaving the market so we can avoid future vaccine and drug shortages.

Our bill would take another important step toward ensuring an adequate vaccine supply. It would confirm the authority of the CDC to develop a plan for the purchase, storage, and rotation of a supply of vaccines sufficient to provide routinely recommended vaccinations for a six-month period for children and adults. Essentially, our bill would create a framework for the CDC to develop a national vaccine stockpile to ensure that childhood vaccine shortages simply do not occur.

Our children deserve timely vaccinations. When childhood vaccinations are in short supply or are unavailable, they do without, living unprotected against disease. That should never happen. Our bill is a step toward ensuring children get the vaccines they need and that they get them at the right time. I urge my colleagues to join us in support of this important public health legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 371

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SUPPLY OF VACCINES.

Title XXI of the Public Health Service Act (42 U.S.C. 300aa-1 et seq.) is amended by adding at the end the following:

''Subtitle 3—Adequate Vaccine Supply

''SEC. 2141. SUPPLY OF VACCINES.

''(a) IN GENERAL.—

''(1) PLAN.—Not later than 6 months after the date of enactment of this section, the Secretary, acting through the Director of the Centers for Disease Control and Prevention, shall develop a plan for the purchase, storage, and rotation of a supply of vaccines sufficient to provide routinely recommended vaccinations for a 6-month period for—

''(A) a national stockpile of vaccines for all children as authorized under section 1928(d)(6) of the Social Security Act (42 U.S.C. 1396s(d)(6)); and

''(B) adults.

''(2) SUPPLY.—The supply of vaccines under paragraph (1) shall—

''(A) include all vaccines routinely recommended for children by the Advisory Committee on Immunization Practices; and

''(B) include all vaccines routinely recommended for adults by the Advisory Committee on Immunization Practices.

''(3) SUPPLY AUTHORITY.—The Secretary shall carry out—

''(A) paragraph (2)(A) using the authority provided for under section 1928(d)(6) of the Social Security Act (42 U.S.C. 1396s(d)(6)); and

''(B) paragraph (2)(B) using—

''(i) the authority provided for under section 317; and

''(ii) any other authority relating to the vaccines described in such paragraph.

''(b) SUBMISSION OF PLAN.—

''(1) IN GENERAL.—Not later than 1 year after the date of enactment of this section, the Secretary shall submit the plan developed under subsection (a) to—

''(A) the Committee on Health, Education, Labor, and Pensions of the Senate;

''(B) the Committee on Finance of the Senate; and

''(C) the Committee on Energy and Commerce of the House of Representatives.

''(2) INCLUSIONS.—The plan shall include a discussion of the considerations that formed—

''(A) the basis for the plan; and

''(B) the prioritization of the schedule for purchasing vaccines set forth in the plan.

''(c) IMPLEMENTATION OF THE PLAN.—Not later than September 30, 2006, the Secretary shall fully implement the plan developed under subsection (a).

''(d) NOTICE.—

''(1) IN GENERAL.—For the purposes of maintaining and administering the supply of vaccines described under subsection (a), the Secretary shall require by contract that the manufacturer of a vaccine included in such supply provide not less than 1 year notice to the Secretary of a discontinuance of the manufacture of the vaccine, or of other factors, that may prevent the manufacturer from providing vaccines pursuant to an arrangement made to carry out this section.

''(2) REDUCTION OF PERIOD OF NOTICE.—The notification period required under paragraph (1) may be reduced if the manufacturer certifies to the Secretary that good cause exists for reduction, under the conditions described in section 506C(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 356c).

''(e) PROCEEDS.—Any proceeds received by the Secretary from the sale of vaccines contained in the supply maintained pursuant to this section, shall be available to the Secretary for the purpose of purchasing additional vaccines for the supply. Such proceeds shall remain available until expended.

''(f) ONGOING REPORTS.—

''(1) IN GENERAL.—Not later than 2 years after submitting the plan pursuant to subsection (b), and periodically thereafter, the Secretary shall submit a report to the Committees identified in subsection (b)(1) that—

''(A) details the progress made in implementing the plan developed under subsection (a); and

''(B) notes impediments, if any, to implementing the plan developed under subsection (a).

''(2) RECOMMENDATION.—The Secretary shall include in the first of such reports required under paragraph (1)—

''(A) a recommendation as to whether the vaccine supply should be extended beyond the 6-month period provided in subsection (a); and

''(B) a discussion of the considerations that formed the recommendation under subparagraph (A).

''(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2004 through 2009.''.

Mrs. CLINTON. Mr. President, I rise today to discuss an important issue to which I have pledged my constant dedication throughout my career—ensuring that children have access to affordable and safe vaccines. These vaccines are one of the most successful and cost-effective tools we have to prevent disease and death.

Yet only a year ago, however, doctors had to turn families away at the door because of national vaccine shortages for eight out of the eleven vaccine-preventable diseases. During the vaccine shortage, children became ill with pneumococcal meningitis and pneumonia, diseases that could have been prevented with an adequate supply of the pneumococcal vaccine.

Since the HELP Committee met to discuss the vaccine shortage crisis, we have witnessed some significant progress, which is a credit to a collaborative effort by public health officials, vaccine manufacturers and providers. Shortages for five vaccines have stopped, and childhood vaccines for eight different diseases are no longer being delayed. These shortages, temporarily alleviated, could return at any time. I know that my home state of New York, like the rest of the Nation, only has a one-to-two month stockpile for some of the routinely recommended childhood vaccines.

At the most recent HELP Committee hearing no vaccines, we listened to a GAO report that acknowledged two critical components to protecting our children's health security, and today I rise to present legislation that would take these two important steps.

Having the government stockpile vaccines is important because vaccine production is a complex process. The GAO report confirmed that a pause in production for safety reasons could happen again and would have a critical and devastating impact on the ability to vaccinate children and adults. I appreciate the administration's announced commitment to provide funds in the 2004 Budget for a vaccine stockpile. The Childhood Vaccine Supply Act would strengthen and support the administration's authority in these efforts and assure that the stockpile includes adults as well as all children, who were affected by the tetanus-diphtheria toxoid shortage last year.

* * *

We also need an additional buffer because DCD acknowledges that it will take 4 years before we can have a 6-month stockpile of childhood vaccines. We need a notification mechanism so that CDC can work with other manufacturers to maintain the vaccine supply when a manufacturer cannot produce an adequate supply of vaccine. Each of the four major vaccine producers has stated that they do not object to this sort of an advance notice provision. The Childhood Vaccine Supply Act would create a notification mechanism for manufacturers to give one-year advance notice when they intend to stop making a vaccine.

We have worked amicably with Senators FRIST, GREGG, and KENNEDY on both of these vaccine provisions. We have work amicably with Senator

FRIST on this issue and our vaccine provisions, and fully expect to continue working with this bipartisan group of Senators to accomplish the important goal of assuring safe vaccines for all children.

By Mr. THOMAS (for himself and Mr. CRAIG):

S. 372. A bill to amend the National Environmental Policy Act of 1969 to require that Federal agencies consult with State agencies and county and local governments on environmental impact statements; to the Committee on Environment and Public Works.

Mr. THOMAS. Mr. President, I rise today to introduce the ''State and Local Government Participation Act of 2003'' which would amend the National Environmental Policy Act, NEPA. This bill is designed to guarantee that Federal agencies identify State, county and local governments as cooperating agencies when fulfilling their environmental planning responsibilities under NEPA.

NEPA was designed to ensure that the environmental impacts of a proposed Federal action are considered and minimized by the federal agency taking that action. It was supposed to provide for adequate public participation in the decision making process on these Federal activities and document an agency's final conclusions with respect to the proposed action.

Although this sounds simple and quite reasonable, NEPA has become a real problem in Wyoming and many States throughout the Nation. A statute that was supposed to provide for additional public input in the federal land management process has instead become an unworkable and cumbersome law. Instead of clarifying and expediting the public planning process on Federal lands. NEPA now serves to delay action and shut-out local governments that depend on the proper use of these Federal lands for their existence.

The ''State and Local Government Participation Act'' is designed to provide for greater input from State and local governments in the NEPA process. This measure would simply guarantee that State, county and local agencies be identified as cooperating entities when preparing land management plans under NEPA. Although the law already provides for voluntary inclusion of state and local entities in the planning process, too often, the federal agencies choose to ignore local governments when preparing planning documents under NEPA. Unfortunately, many Federal agencies have become so engrossed in examining every environmental aspect of a proposed action on Federal land, they have forgotten to consult with the folks who actually live near and depend on these areas for their economic survival.

States and local communities must be consulted and included when proposed actions are being taken on Federal lands in their State. Too often, Federal land managers are more concerned about the comments of environmental organizations located in Washington, DC or New York City than the people who actually live in the State where the proposed action will take place. This is wrong. The concerns, comments and input of state and local communities are vital for the proper management of federal lands in the West. The ''State and Local Government Participation Act of 2003'' will begin to address this troubling problem and guarantee that local folks will be involved in proposed decision that will affect their lives.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 372

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''State and Local Government Participation Act of 2003''.

SEC. 2. CONSULTATION WITH STATE AGENCIES AND COUNTY AND LOCAL GOVERNMENTS ON ENVIRONMENTAL IMPACT STATEMENTS.

Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is amended in the first sentence of the matter following clause (v) by striking ''any Federal agency which has'' and inserting ''each Federal agency, State agency, county government, and local government that has''.

By Mr. KENNEDY (for himself, Mr. KERRY, Mr. AKAKA, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. INOUYE, Mr. FEINGOLD, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. REED, and Mr. SARBANES):

S. 373. A bill to amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the medicare program; to the Committee on Finance.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues, Senators KERRY, CLINTON, SARBANES, CORZINE, MIKULSKI, DODD, LEVIN, REED, LIEBERMAN, FEINGOLD, INOUYE, and AKAKA in introducing the Safe Nursing and Patient Care Act.

Current Federal safety standards limit work hours for pilots, flight attendants, truck drivers, railroad engineers and other professionals, in order to protect the public safety. However, no similar limitation currently exists for the Nation's nurses, who care for so many of our most vulnerable citizens.

The Safe Nursing and Patient Care Act will limit mandatory overtime for nurses in order to protect patient safety and improve working conditions for nurses. Across the country today, the widespread practice of mandatory overtime means that over-worked nurses are often providing care in unacceptable circumstances. Restrictions for mandatory overtime will help ensure that nurses are able to provide the highest quality of care to their patients.

Some hospitals have taken action to deal with this serious problem. Over the last few years in Massachusetts Brockton Hospital and St. Vincent Hospital agreed to limit mandatory overtime as part of negotiations following successful strikes by nurses. These limits will protect patients and improve working conditions for the nurses, and will help in the recruitment and retention of nurses in the future.

Job dissatisfaction and harsh overtime hours are major factors in the current shortage of nurses. Nationally, the shortfall is expected to rise to 20 percent in coming years. The goal of the Safe Nursing and Patient Care Act is to improve the quality of life for nurses, so that more persons will enter the nursing profession and remain in it.

The bill limits mandatory overtime to declared states of emergency. Clearly, there are times when other options are exhausted and hospitals need additional help. The bill takes account of such needs. The bill requires health providers to notify nurses of these new rights, and nurses who report violations are guaranteed protection from workplace discrimination. In addition, the bill requires the Agency for Health Care Research and Quality to report to Congress on appropriate standards for the maximum numbers of hours that nurses should work in various health settings without compromising patient care.

Improving conditions for nurses is an essential part of our ongoing effort to reduce medical errors, improve patient outcomes, and encourage more Americans to become and remain nurses. The power of providers to force nurses to work beyond what is safe for themselves and their patients is one of the major drawbacks to careers in nursing. The Safe Nursing and Patient Care Act is a significant step that Congress can take to support the Nation's nurses, and I urge my colleagues to support it.

By Mr. BAUCUS (for himself, Mr. BUNNING, Mr. ENZI, Mr. CRAPO, Mr. BURNS, Mr. JOHNSON, Mr. BAYH, Mr. COCHRAN, Mr. INOFE, Mr. ALLEN, Mr. NICKLES, Mr. WARNER, and Mr. MILLER):

S. 374. A bill to amend the Internal Revenue Code of 1986 to repeal the occupational taxes relating to distilled spirits, wine, and beer; to the Committee on Finance.

Mr. BAUCUS. Mr. President, it is with great pleasure that I join my good friend and colleague, Senator Bunning today in introducing legislation that will repeal the Special Occupational Tax, (SOT), on taxpayers who manufacture, distribute, and sell alcoholic beverages. The special occupational tax is

not a tax on alcoholic products, but rather operates as a license fee on businesses. The tax is imposed on those engaged in the business of selling alcohol beverages. Believe it or not, this tax was originally established to help finance the Civil War. That war is over, and this inequitable tax has outlived its original purpose. Clearly an example of an anticipated approach to Federal taxation, repealing the SOT has an element of simplification in it.

The SOT on alcohol dramatically increased during the budget process in 1988 and has unfairly burdened business owners across the country since. From Thompson Falls to Sidney, from Chinook to Billings, small businesses are burdened with yet another tax in the form of the SOT. According to the ATF, there are 480,427 locations nationwide that pay SOT's every year, including 485,603 retailers. These retail establishments account for $114 million out of $126 million in SOT revenues.

In Montana, there are 3,378 locations, including 3,254 restaurants and 494 convenience stores, which pay nearly $2 million dollars in the SOT every year. Seasonal resorts in Whitefish and Yellowstone, ''mom and pop'' convenience stores in Butte, and allowing alleys, flower shops, and restaurants across Montana, and the United States, pay the Federal Government almost $100 million per year for the privilege of running businesses that sell beer, wine, or alcoholic beverages.

The SOT is extremely regressive. Retailers must annually pay $250 per location; wholesalers pay $500; vintners and distillers pay $1000. Because the SOT is levied on a per location basis, a sole proprietorship must pay the same amount as one of the Nation's largest retailers, and locally-owned chains having to pay per location, would have to pay as much as, if not more than, the Nation's largest single site brewery. In testimony before the Finance Committee last spring, a small business owner from Helena, MT who runs four convenience stores and three restaurants said it best. ''Whether it's a seasonal restaurant, an Elks Lodge or American Legion, a bowling center, campground, a florist who delivers gift baskets containing wine, or a convenience store operator, no one is spared from the tax.'' This is not what Congress had in mind 150 years ago, and I don't believe it's a situation we want today.

Repealing the SOT on alcohol is supported by a broad-based group of business organizations and enjoys widespread bipartisan support on Capital Hill. Similar legislation is being introduced in the House today, and a bill, identical to this one, was introduced in the previous Congress, but for one reason or another, the law was not enacted.

The legislation preserves ATF's record-keeping requirements, while removing the agency's enforcement burden, and will save up to $2 million per year. The GAO examined SOT efficacy several times, and found it fundamentally flawed. The Joint Committee on Taxation called for the elimination of SOT in its June 2001 simplification study.

More than 90 percent of all SOT revenue comes from retailers—a great majority of that number are small businesses. Recently, President Bush met with a group of small business owners and employees in St. Louis. He said, ''The best way to encourage job growth is to let [small businesses] keep more of their own money, so they can invest in their business and make it easier for somebody to find work.'' Repealing the SOT would provide an immediate and visible tax cut to small business owners.

Now, as the Federal Government considers ways to provide additional economic stimulus to the people who need it most, the time is right for us to move forward and enact this legislation to repeal the SOT an alcohol. We urge our colleagues to join us in this endeavor.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 374

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REPEAL OF OCCUPATIONAL TAXES RELATING TO DISTILLED SPIRITS, WINE, AND BEER.

(a) REPEAL OF OCCUPATIONAL TAXES.—

(1) IN GENERAL.—The following provisions of part II of subchapter A of chapter 51 of the Internal Revenue Code of 1986 (relating to occupational taxes) are hereby repealed:

(A) Subpart A (relating to proprietors of distilled spirits plants, bonded wine cellars, etc.).

(B) Subpart B (relating to brewer).

(C) Subpart D (relating to wholesale dealers) (other than sections 5114 and 5116).

(D) Subpart E (relating to retail dealers) (other than section 5124).

(E) Subpart G (relating to general provisions) (other than sections 5142, 5143, 5145, and 5146).

(2) NONBEVERAGE DOMESTIC DRAWBACK.—Section 5131 of such Code is amended by striking '', on payment of a special tax per annum,''.

(3) INDUSTRIAL USE OF DISTILLED SPIRITS.—Section 5276 of such Code is hereby repealed.

(b) CONFORMING AMENDMENTS.—

(1)(A) The heading for part II of subchapter A of chapter 51 of such Code and the table of subparts for such part are amended to read as follows:

''PART II—MISCELLANEOUS PROVISIONS

''Subpart A. Manufacturers of stills.

''Subpart B. Nonbeverage domestic drawback claimants.

''Subpart C. Recordkeeping by dealers.

''Subpart D. Other provisions.''

(B) The table of parts for such subchapter A is amended by striking the item relating to part II and inserting the following new item:

''Part II. Miscellaneous provisions.''

(2) Subpart C of part II of such subchapter (relating to manufacturers of stills) is redesignated as subpart A.

(3)(A) Subpart F of such part II (relating to nonbeverage domestic drawback claimants) is redesignated as subpart B and sections 5131 through 5134 are redesignated as sections 5111 through 5114, respectively.

(B) The table of sections for such subpart B, as so redesignated, is amended—

(i) by redesignating the items relating to sections 5131 through 5134 as relating to sections 5111 through 5114, respectively, and

(ii) by striking ''and rate of tax'' in the item relating to section 5111, as so redesignated.

(C) Section 5111 of such Code, as redesignated by subparagraph (A), is amended—

(i) by striking ''and rate of tax'' in the section heading,

(ii) by striking the subsection heading for subsection (a), and

(iii) by striking subsection (b).

(4) Part II of subchapter A of chapter 51 of such Code is amended by adding after subpart B, as redesignated by paragraph (3), the following new subpart:

''Subpart C—Recordkeeping by Dealers

''Sec. 5121. Recordkeeping by wholesale dealers.

''Sec. 5122. Recordkeeping by retail dealers.

''Sec. 5123. Preservation and inspection of records, and entry of premises for inspection.''

(5)(A) Section 5114 of such Code (relating to records) is moved to subpart C of such part II and inserted after the table of sections for such subpart.

(B) Section 5114 of such Code is amended—

(i) by striking the section heading and inserting the following new heading:

''SEC. 5121. RECORDKEEPING BY WHOLESALE DEALERS.'',

and

(ii) by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) WHOLESALE DEALERS.—For purposes of this part—

''(1) WHOLESALE DEALER IN LIQUORS.—The term 'wholesale dealer in liquors' means any dealer (other than a wholesale dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to another dealer.

''(2) WHOLESALE DEALER IN BEER.—The term 'wholesale dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to another dealer.

''(3) DEALER.—The term 'dealer' means any person who sells, or offers for sale, any distilled spirits, wines, or beer.

''(4) PRESUMPTION IN CASE OF SALE OF 20 WINE GALLONS OR MORE.—The sale, or offer for sale, of distilled spirits, wines, or beer, in quantities of 20 wine gallons or more to the same person at the same time, shall be presumptive evidence that the person making such sale, or offer for sale, is engaged in or carrying on the business of a wholesale dealer in liquors or a wholesale dealer in beer, as the case may be. Such presumption may be overcome by evidence satisfactorily showing that such sale, or offer for sale, was made to a person other than a dealer.''

(C) Paragraph (3) of section 5121(d) of such Code, as so redesignated, is amended by striking ''section 5146'' and inserting ''section 5123''.

(6)(A) Section 5124 of such Code (relating to records) is moved to subpart C of part II of subchapter A of chapter 51 of such Code and inserted after section 5121.

(B) Section 5124 of such Code is amended—

(i) by striking the section heading and inserting the following new heading:

''SEC. 5122. RECORDKEEPING BY RETAIL DEALERS.'',

(ii) by striking ''section 5146'' in subsection (c) and inserting ''section 5123'', and

(iii) by redesignating subsection (c) as subsection (d) and inserting after subsection (b) the following new subsection:

''(c) RETAIL DEALERS.—For purposes of this section—

''(1) RETAIL DEALER IN LIQUORS.—The term 'retail dealer in liquors' means any dealer (other than a retail dealer in beer) who sells, or offers for sale, distilled spirits, wines, or beer, to any person other than a dealer.

''(2) RETAIL DEALER IN BEER.—The term 'retail dealer in beer' means any dealer who sells, or offers for sale, beer, but not distilled spirits or wines, to any person other than a dealer.

''(3) DEALER.—The term 'dealer' has the meaning given such term by section 5121(c)(3).''

(7) Section 5146 of such Code is moved to subpart C of part II of subchapter A of chapter 51 of such Code, inserted after section 5122, and redesignated as section 5123.

(8) Part II of subchapter A of chapter 51 of such Code is amended by inserting after subpart C the following new subpart:

''Subpart D—Other Provisions

''Sec. 5131. Packaging distilled spirits for industrial uses.

''Sec. 5132. Prohibited purchases by dealers.''

(9) Section 5116 of such Code is moved to subpart D of part II of subchapter A of chapter 51 of such Code, inserted after the table of sections, redesignated as section 5131, and amended by inserting ''(as defined in section 5121(c))'' after ''dealer'' in subsection (a).

(10) Subpart D of part II of subchapter A of chapter 51 of such Code is amended by adding at the end thereof the following new section:

''SEC. 5132. PROHIBITED PURCHASES BY DEALERS.

''(a) IN GENERAL.—Except as provided in regulations prescribed by the Secretary, it shall be unlawful for a dealer to purchase distilled spirits from any person other than a wholesale dealer in liquors who is required to keep the records prescribed by section 5121.

''(b) PENALTY AND FORFEITURE.—

''For penalty and forfeiture provisions applicable to violations of subsection (a), see sections 5687 and 7302.''

(11) Subsection (b) of section 5002 of such Code is amended—

(A) by striking ''section 5112(a)'' and inserting ''section 5121(c)(3)'',

(B) by striking ''section 5112'' and inserting ''section 5121(c)'',

(C) by striking ''section 5122'' and inserting ''section 5122(c)''.

(12) Subparagraph (A) of section 5010(c)(2) of such Code is amended by striking ''section 5134'' and inserting ''section 5114''.

(13) Subsection (d) of section 5052 of such Code is amended to read as follows:

''(d) BREWER.—For purposes of this chapter, the term 'brewer' means any person who brews beer or produces beer for sale. Such term shall not include any person who produces only beer exempt from tax under section 5053(e).''

(14) The text of section 5182 of such Code is amended to read as follows:

''For provisions requiring recordkeeping by wholesale liquor dealers, see section 5112, and by retail liquor dealers, see section 5122.''

(15) Subsection (b) of section 5402 of such Code is amended by striking ''section 5092'' and inserting ''section 5052(d)''.

(16) Section 5671 of such Code is amended by striking ''or 5091''.

(17)(A) Part V of subchapter J of chapter 51 of such Code is hereby repealed.

(B) The table of parts for such subchapter J is amended by striking the item relating to part V.

(18)(A) Sections 5142, 5143, and 5145 of such Code are moved to subchapter D of chapter 52 of such Code, inserted after section 5731, redesignated as sections 5732, 5733, and 5734, respectively, and amended by striking ''this part'' each place it appears and inserting ''this subchapter''.

(B) Section 5732 of such Code, as redesignated by subparagraph (A), is amended by striking ''(except the tax imposed by section 5131)'' each place it appears.

(C) Subsection (c) of section 5733 of such Code, as redesignated by subparagraph (A), is amended by striking paragraph (2) and by redesignating paragraph (3) as paragraph (2).

(D) The table of sections for subchapter D of chapter 52 of such Code is amended by adding at the end thereof the following:

''Sec. 5732. Payment of tax.

''Sec. 5733. Provisions relating to liability for occupational taxes.

''Sec. 5734. Application of State laws.''

(E) Section 5731 of such Code is amended by striking subsection (c) and by redesignating subsection (d) as subsection (c).

(19) Subsection (c) of section 6071 of such Code is amended by striking ''section 5142'' and inserting ''section 5732''.

(20) Paragraph (1) of section 7652(g) of such Code is amended—

(A) by striking ''subpart F'' and inserting ''subpart B'', and

(B) by striking ''section 5131(a)'' and inserting ''section 5111(a)''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, but shall not apply to taxes imposed for periods before such date.

Mr. BUNNING. Mr. President, I am happy to join my colleague, Senator BAUCUS, in the introduction of legislation to repeal the Special Occupational Tax on the sale of alcoholic beverages.

This is an unfair tax imposed on all businesses that manufacture, distribute or sell alcohol products. It has a particularly egregious impact on the Nation's small businesses—the ''Mom and Pop'' convenience stores, the local bowling alleys, the small sandwich shop, the seasonal bait shop, and the community lodges. This regressive tax imposes the same tax on little businesses and large businesses. The tax is levied as a fixed amount per location—$250 for retailers, $500 for wholesalers, and $1,000 for vinters and distillers—with no adjustment for the size of a business. Thus, a family which owns two small convenience stores will pay twice as much as a large one-location ''super'' party store. This tax results in small retail outlets paying a larger percentage of their revenue towards this tax. In addition, the tax is not prorated, meaning that seasonal businesses such as bait shops or marinas that are open for three months a year will pay the same rate as businesses that are open year-around.

Largely due to the negative impact of this tax on small businesses, there has been strong bi-partisan support for its repeal in both the Senate and the House. The effectiveness of the tax—which is traditionally quite expensive to administer—has been found to be flawed by the General Accounting Office in several examinations. In a 2001 study on the simplification of the Federal tax system, the Joint Committee on Taxation recommended the repeal of the Special Occupancy Tax on alcohol. The Joint Committee found that the tax is in the nature of a business license fee and serves no tax policy purpose.

I hope my colleagues will join Senator BAUCUS and me in repealing this burdensome tax once and for all.

By Mr. DOMENICI (for himself, Mrs. LINCOLN, Mr. ROCKEFELLER, and Mr. THOMAS):

S. 275. A bill to amend title XVIII of the Social Security Act to establish a minimum geographic cost-of-practice index value for physicians' services furnished under the medicare program of 1; to the Committee on Finance.

Mr. DOMENICI. Mr. President, I rise today with my friends Senator LINCOLN, Senator ROCKEFELLER, and Senator THOMAS to introduce the ''Medicare Access Equity Act of 2003,'' a bill to address the inequality that exists in Medicare reimbursement levels to urban and rural physicians.

Nothing is more important to our families than accessible and available health care. When we become ill and need treatment, we must turn to our doctors for help. But, imagine this, a hospital filled with the latest technology, and no doctors to administer treatment.

Does this sound ridiculous? It's not. Rural patients often have difficulty obtaining timely care due to a shortage of physicians, and, the problem I have described is not just occurring in my home State of New Mexico, forty-one other States are experiencing similar problems because of a common set of rules and procedures.

In most rural areas, Federal policy undermines a doctor's ability to see Medicare patients by establishing disparity in reimbursement levels. Rural physicians are among the lowest Medicare dollar reimbursement recipients in the country, and I submit that this is the reason these areas cannot effectively recruit and retain their physicians.

Medicare payments for physician services are based upon a fee schedule, intended to relate payments for a given service to the actual resources used in providing that service. One component of this fee schedule is ''physician work.'' CMS defines ''physician work'' as the amount of time, skill and intensity necessary to provide service.

Each component of the fee schedule is multiplied by a geographic index; designed to adjust for variations in cost. The geographic index as it relates to ''physician work'' is lower in rural areas than in metropolitan/urban areas. Thus, although rural physicians put in as much or even more time, skill, and intensity into their work as physicians in metropolitan/urban areas; rural physicians are paid less for their work.

This practice is unfair and it is discriminatory. There is no reason doctors in Albuquerque, NM should be paid less for their time than doctors in New

York City. Doctors should be valued equally, irrespective of geography.

The ''Medicare Access Equity Act of 2003'' fixes this problem. The Bill creates a more equitable Medicare reimbursement formula for doctors in 56 different fee schedule areas in 42 different States. It continues to apply the current formula to determine geographic index as it relates to physician work. However, once the calculation has been completed, The Secretary will increase the work geographic index to one for any locality for which such index is below one. Those fee schedule areas that are currently at or above one will not be affected by this legislation.

Our Bill builds upon the simple proposition that increased Medicare Physician reimbursements improve patient access to care and the ability of states to recruit and retain physicians. If Medicare physician reimbursement rates are raised, patients will be the ultimate beneficiaries.

Thank you and I look forward to working with my colleagues Senator LINCOLN, Senator ROCKEFELLER, and Senator THOMAS on this very important issue.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 375

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; FINDINGS.

(a) SHORT TITLE.—This Act may be cited as the ''Medicare Access Equity Act of 2003''.

(b) FINDINGS.—Congress makes the following findings:

(1) Americans have paid taxes in to the medicare program equally across the country and every American should have access to quality health care.

(2) There is a national market for health care providers.

(3) Increasingly, private insurance companies tie their reimbursement rates to those paid by medicare.

(4) The physician fee schedule formula for medicare currently includes several adjustments for variable costs throughout the nation. While it is appropriate for the cost of running a practice to reflect overhead differences, physicians should not be compensated for their time differently based on where they live.

(5) Medicare beneficiaries pay the same part B premium regardless of location which forces subsidization of higher reimbursement areas by seniors in lower reimbursement areas without any corresponding benefit.

(6) Areas of the country that currently receive the lowest reimbursement from medicare are often the same areas that are experiencing the greatest shortage of physicians. Attracting more physicians to these areas cannot be achieved without greater equity in medicare reimbursement.

SEC. 2. ESTABLISHMENT OF FLOOR ON WORK GEOGRAPHIC ADJUSTMENT.

Section 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w–4(e)(1)) is amended by adding at the end the following new subparagraph:

''(E) FLOOR AT 1.0 ON WORK GEOGRAPHIC INDICES.—After calculating the work geographic indices in subparagraph (A)(iii), for purposes of payment for services furnished on or after January 1, 2004, the Secretary shall increase the work geographic index to 1.00 for any locality for which such geographic index is less than 1.00.''.

Mrs. LINCOLN. Mr. President, I am pleased to join my colleague Senator PETE DOMENICI today in introducing the ''Medicare Access Equity Act of 2003.''

This important legislation will significantly help rural physicians in Arkansas and across the country keep their doors open to Medicare beneficiaries. By correcting a disparity in the Medicare physician fee schedule, Medicare will pay rural physicians more fairly for their individual effort in treating Medicare patients.

In my home State of Arkansas, 60 percent of seniors live in rural areas. Consequently, Medicare patients make up a large percentage of a rural physician's practice.

It is simply unfair that current Federal policy doesn't value physician work in all areas, urban and rural, in the same way. Because the component of the fee schedule that relates to physician work is multiplied by a geographic indicator adjusting for variants in cost, Medicare payment policy devalues the amount of time and skill that rural physicians spend in providing medical services.

I believe that work is work, regardless of where it is performed. It takes the same amount of time and skill for a physician in Pea Ridge, AR to treat a wound or diagnose a patient as a physician in Los Angeles, CA. It is time to correct this inequity.

The Medicare Access Equity Act does this by revising the geographic practice cost indices GPCI, to establish a minimum index of 1 for the ''physician work'' component. The bill applies the current formula to determine physician work GPCIs, but if a GPCI is calculated to be less than 1, the Secretary of Health and Human Services will increase it to 1.

This is critical to my home State of Arkansas, where the physician work GPCI is currently 0.953, the sixth lowest GPCI in the country. Increasing Arkansas' work GPCI to 1 will automatically pump more money to rural physicians in Arkansas, where many may begin to close their doors due to the rising costs of providing health care.

It is my hope that Senator DOMENICI and I, with help from the Senate Rural Health Caucus, can pass this important legislation as part of any Medicare reform we consider this year. Fair reimbursement is key to ensuring that rural Americans retain the quality health care they receive from their doctors.

By Ms. LANDRIEU (for herself, Mr. BREAUX, Mr. COCHRAN, Mr. JOHNSON, Mr. NELSON of Florida, Mr. VOINOVICH, Mr. REID, Mr. SANTORUM, Mr. DURBIN, Mr. CHAFEE, Mr. FEINGOLD, Mr. LIEBERMAN, Ms. STABENOW, and Mr. MILLER):

S. 377. A bill to require the Secretary of the Treasury to mint coins in commemoration of the contributions of Dr. Martin Luther King, Jr., to the United States; to the Committee on Banking, Housing, and Urban Affairs.

Ms. LANDRIEU. Mr. President, I rise today to introduce legislation to pay tribute to one of our Nation's most prominent individuals, Dr. Martin Luther King, Jr. The Martin Luther King, Jr. Commemorative Coin Act of 2003 instructs the Secretary of the Treasury to mint coins to recognize Dr. King's contribution to the people of the United States. Revenues from the surcharge on the coin would go to the Library of Congress to purchase and maintain historical documents and other materials associated with the life and legacy of Martin Luther King, Jr. This honor is long overdue.

His contributions to our Nation are well known and well documented. From 1955 when he helped lead the Montgomery Boycott to his death at the hands of an assassin in 1968, Dr. King dedicated his life to the cause of civil rights. In those 13 years, he was jailed several times, got cursed at and stoned by mobs, reviled by racist attacks in the South. Civil rights marches for freedoms we take for granted today like the right to vote or drink from the same water fountain, were met with police dogs and fire hoses.

Honoring Dr. King also means honoring those local leaders in the civil rights struggle who kept Dr. King's vision alive at the grassroots. In my particular home State of Louisiana, Rev. Dr. T.J. Jemison led a successful bus boycott in our State capital Baton Rouge. He became an advisor to Dr. King during the Montgomery Bus boycott. Many of these local leaders faced constant danger at home. One Louisianan, Dr. C.O. Simpkins of Shreveport had his home bombed simply because he dared to stand by Dr. King and demand that the buses in Shreveport be integrated.

But Dr. King urged us to fight hate with love, quell violence with peace, and to replace ignorance with understanding. He believed in a higher calling for America. In his famous ''I Have a Dream'' speech at the Lincoln Memorial in 1963, he called on America to live up to its creed, that all men were created equal. America heeded his call by passing landmark civil rights legislation in 1958 and 1964. For his work, he received the Novel Peace Prize in 1964. At 35 years old, Dr. King was the youngest recipient of the Peace Prize.

Today, our Nation is a better place than it was just 40 years ago. It is truly remarkable how much this nation has changed in the lifetimes of virtually everyone currently serving in the Senate. Our nation has made great strides forward, but race relations in our country are not perfect. But we are working to get there.

A nineteenth century rabbi named Zadok Rabinwitz said that ''A man's

dreams are an index to his greatness.'' Dr. King had a dream. His dream is becoming our nation's reality. By any measure his dreams were great and they made a great Nation even greater. I urge my colleagues to support the Martin Luther King, Jr. Commemorative Coin Act of 2003.

By Mr. DASCHLE (for himself, Mr. BINGAMAN, Mr. CONRAD, Mr. BAUCUS, Mr. JOHNSON, and Mr. KOHL):

S. 378. A bill to recruit and retain more qualified individuals to teach in Tribal Colleges or Universities; to the Committee on Indian Affairs.

Mr. DASCHLE. Mr. President, our tribal colleges and universities have come to play a critically important role in educating Native Americans across the country. For more than 30 years, these institutions have proven instrumental in providing a quality education for those who had previously been failed by our mainstream educational system. Before the tribal college movement began, only six or seven out of 100 Native American students attended college. Of those few, only one or two would graduate with a degree. Since these institutions have curricula that is culturally relevant and is often focused on a tribe's particular philosophy, culture, language and economic needs, they have a high success rate in educating Native American people.

I had the honor today of meeting with students, faculty and presidents from South Dakota's tribal colleges to talk about the educational needs of Native Americans and the role tribal colleges play in strengthening tribal communities. It, like so many of the meetings I have had with representatives of tribal colleges, was a fascinating conversation. I am consistently impressed by the enduring spirit, sense of community and hope for a better quality of life that these institutions support. After meeting these students and educators, I have no doubt that the future of Indian Country is in good hands.

The results of a tribal college education are impressive. Recent studies show that 91 percent of 1998 tribal college and university graduates are working or pursuing additional education one year after graduating. In addition, the unemployment rate of recently polled tribal college graduates was 15 percent, compared to 55 percent on many reservations overall.

While tribal colleges and universities have been highly successful in helping Native Americans obtain a higher education, many challenges remain to ensure the future success of these institutions. These schools rely heavily on Federal resources to provide educational opportunities for all students. As a result, I strongly support efforts to provide additional funding to these colleges through the Interior, Agriculture and Labor, Health and Human Services, and Education Appropriations bills.

In addition to resource constraints, administrators have expressed a particular frustration over the difficulty they experience in attracting qualified individuals to teach at tribal colleges. Geographic isolation and low faculty salaries have made recruitment and retention particularly difficult for many of these schools. This problem is increasing as enrollment rises.

That is why I am introducing the Tribal College and University Teacher Loan Forgiveness Act. This legislation will provide loan forgiveness to individuals who commit to teach for up to five years in one of the 34 tribal colleges nationwide. Individuals who have Perkins, Direct, or Guaranteed loans may qualify to receive up to $15,000 in loan forgiveness. This program will provide these schools extra help in attracting qualified teachers, and thus help ensure that deserving students receive a high quality education.

This measure will benefit individual students and their communities. By providing greater opportunities for Native American students to develop skills and expertise, this bill will spur economic growth and help bring prosperity and self-sufficiency to communities that desperately need it. Native Americans and the tribal college system deserve nothing less. I believe our responsibility was probably best summed up by one of my state's greatest leaders, Sitting Bull. He once said, ''Let us put our minds together and see what life we can make for our children.''

I am pleased that Senator's BAUCUS, BINGAMAN, CONRAD, JOHNSON, and KOHL are original cosponsors of this bill, and I look forward to working with my colleagues to pass this important legislation.

I ask unanimous consent that the text of the Tribal College and University Teacher Loan Forgiveness Act be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 378

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LOAN REPAYMENT OR CANCELLATION FOR INDIVIDUALS WHO TEACH IN TRIBAL COLLEGES OR UNIVERSITIES.

(a) SHORT TITLE.—This Act may be cited as the ''Tribal Colleges and Universities Teacher Loan Forgiveness Act''.

(b) PERKINS LOANS.—

(1) AMENDMENT.—Section 465(a) of the Higher Education Act of 1965 (20 U.S.C. 1087ee(a)) is amended—

(A) in paragraph (2)—

(i) in subparagraph (H), by striking ''or'' after the semicolon;

(ii) in subparagraph (I), by striking the period and inserting ''; or''; and

(iii) by adding at the end the following:

''(J) as a full-time teacher at a Tribal College or University as defined in section 316(b).''; and

(B) in paragraph (3)(A)(i), by striking ''or (I)'' and inserting ''(I), or (J)''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall be effective for service performed during academic year 1998–1999 and succeeding academic years, notwithstanding any contrary provision of the promissory note under which a loan under part E of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087aa et seq.) was made.

(c) FFEL AND DIRECT LOANS.—Part G of title IV of the Higher Education Act of 1965 (20 U.S.C. 1088 et seq.) is amended by adding at the end the following:

''SEC. 493C. LOAN REPAYMENT OR CANCELLATION FOR INDIVIDUALS WHO TEACH IN TRIBAL COLLEGES OR UNIVERSITIES.

''(a) PROGRAM AUTHORIZED.—The Secretary shall carry out a program, through the holder of a loan, of assuming or canceling the obligation to repay a qualified loan amount, in accordance with subsection (b), for any new borrower on or after the date of enactment of the Tribal Colleges and Universities Teacher Loan Forgiveness Act, who—

''(1) has been employed as a full-time teacher at a Tribal College or University as defined in section 316(b); and

''(2) is not in default on a loan for which the borrower seeks repayment or cancellation.

''(b) QUALIFIED LOAN AMOUNTS.—

''(1) PERCENTAGES.—Subject to paragraph (2), the Secretary shall assume or cancel the obligation to repay under this section—

''(A) 15 percent of the amount of all loans made, insured, or guaranteed after the date of enactment of the Tribal Colleges and Universities Teacher Loan Forgiveness Act to a student under part B or D, for the first or second year of employment described in subsection (a)(1);

''(B) 20 percent of such total amount, for the third or fourth year of such employment; and

''(C) 30 percent of such total amount, for the fifth year of such employment.

''(2) MAXIMUM.—The Secretary shall not repay or cancel under this section more than $15,000 in the aggregate of loans made, insured, or guaranteed under parts B and D for any student.

''(3) TREATMENT OF CONSOLIDATION LOANS.—A loan amount for a loan made under section 428C may be a qualified loan amount for the purposes of this subsection only to the extent that such loan amount was used to repay a loan made, insured, or guaranteed under part B or D for a borrower who meets the requirements of subsection (a), as determined in accordance with regulations prescribed by the Secretary.

''(c) REGULATIONS.—The Secretary is authorized to issue such regulations as may be necessary to carry out the provisions of this section.

''(d) CONSTRUCTION.—Nothing in this section shall be construed to authorize any refunding of any repayment of a loan.

''(e) PREVENTION OF DOUBLE BENEFITS.—No borrower may, for the same service, receive a benefit under both this section and subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12571 et seq.).

''(f) DEFINITION.—For purposes of this section, the term 'year', when applied to employment as a teacher, means an academic year as defined by the Secretary.''.

SEC. 2. AMOUNTS FORGIVEN NOT TREATED AS GROSS INCOME.

The amount of any loan that is assumed or canceled under an amendment made by this Act shall not, consistent with section 108(f) of the Internal Revenue Code of 1986, be treated as gross income for Federal income tax purposes.

By Mr. BINGAMAN (for himself and Mr. THOMAS):

S. 379. A bill to amend title XVIII of the Social Security Act to improve the medicare incentive payment program; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, the legislation I am introducing today with Senators THOMAS, LINCOLN, and JOHNSON entitled ''The Medicare Incentive Payment Program Improvement Act of 2003'' is designed to improve the flow of needed bonus payments to physicians serving Medicare patients in Health Professions Shortage Areas, HPSA.

The Medicare Incentive Payment Program, MIPP, created by the Omnibus Budget Reconciliation Act of 1987, was meant to assist physicians in defraying the higher costs and burdens of serving Medicare patients in shortage areas. Rural areas are know to suffer from physician shortages, both primary care and specialty physicians. In fact, even though 20 percent of America lives in a rural area, less than 11 percent of physicians in the U.S., practice in rural areas.

In my own State, the ongoing loss of physicians from underserved areas has affected both primary care and in particular, specialty services. In many areas, the shortage of specialists exceeds that of the primary care physicians. The New Mexico Health Policy Commission reported in its year 2000 report that 22 percent of residents in Los Alamos and Santa Fe were unable to receive needed specialist care.

While the national ratio of physicians per population is 198 doctors per 100,000 persons, New Mexico ranks 33rd in the country with only 170 physicians per 100,000 population. We are not in a position to ''grow our own doctors'' either as New Mexico ranks 37th among the 46 States with medical schools in graduating physicians per capita.

New Mexico, like many other States with large numbers health profession shortage areas, or HPSAs, must rely on its ability to recruit and retain physicians in underserved areas to meet the health care needs of its citizens. It was the original intent of the MIPP to do this, by allowing for physicians in underserved areas to receive an additional 10 percent add-on in payments for services rendered. These 10 percent ''bonuses'' are meant to be an essential component in our ongoing effort to ensure Medicare beneficiaries access to medical services, particularly in underserved areas.

Unfortunately, the Medicare Incentive Payment Program has fared poorly, with few providers choosing to receive the payments. In fact, the total annual physician payments have never exceeded $100 million, because of a series of disincentives in the legislation.

The program requires a provider to do a number of things to obtain the bonus payments. First, providers must be aware that MIPP payments are available to them. Many providers are unaware of the program's existence. Next, physicians must find out if the patient's medical care occurred in a shortage area. Following this, a unique code must be attached to the Medicare claim, which is then forwarded to the carrier. Finally, after all these steps, providers are subjected to automatic Medicare audits, just for applying for the very payments for which they are eligible.

Providers committed to serving Medicare patients in underserved areas deserve the support assured by the original legislation's intent.

The Medicare Incentive Payment Improvement Act of 2003 addresses and improves shortcomings in the original legislation by: Placing the burden for determining the bonus eligibility on the Medicare carrier. Eliminating automatic provider audits. Directing the Center for Medicare and Medicaid Services to establish a Medicare Incentive Payment Program Educational Program for Providers. Establishing an ongoing analysis of the programs, ability to improve Medicare beneficiaries' access to physician services. Continue to provide the original 10 percent add-on bonus for Part B physician payments in Health Provider Shortage Areas.

Medicare carriers are the logical arbiters to determine whether physician services occurred in a shortage area. Physicians, already overworked, lack sufficient time, resources and training to research and determine whether a service was provided in a HPSA. By placing the responsibility on carriers, with their sophisticated information systems, the physician's administrative burdens will be reduced.

The automatic audits triggered by this program, which are costly, time intensive, and unwarranted, will be lifted under our legislation. By placing the responsibility on carriers to determine payment eligibility the need for provider audits is eliminated.

While the MIPP program is intended to improve beneficiaries' access to physician services, there is no measure of the program's effect on physician availability. The legislation offered today directs CMS to perform an ongoing analysis as to whether these payments actually do improve beneficiaries' access to physician services.

I believe these improvements, in addition to others listed above, will greatly improve patient's access to care.

The following organizations have expressed support for this legislation: American College of Physicians/American Society of Internal Medicine, and the National Rural Health Association.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Incentive Payment Program Improvement Act of 2003''.

SEC. 2. PROCEDURES FOR SECRETARY, AND NOT PHYSICIANS, TO DETERMINE WHEN BONUS PAYMENTS UNDER MEDICARE INCENTIVE PAYMENT PROGRAM SHOULD BE MADE.

Section 1833(m) of the Social Security Act (42 U.S.C. 1395*l*(m)) is amended—

(1) by inserting ''(1)'' after ''(m)''; and

(2) by adding at the end the following new paragraph:

''(2) The Secretary shall establish procedures under which the Secretary, and not the physician furnishing the service, is responsible for determining when a payment is required to be made under paragraph (1).''.

SEC. 3. EDUCATIONAL PROGRAM REGARDING THE MEDICARE INCENTIVE PAYMENT PROGRAM.

The Secretary of Health and Human Services shall establish and implement an ongoing educational program to provide education to physicians under the medicare program on the medicare incentive payment program under section 1833(m) of the Social Security Act (42 U.S.C. 1395*l*(m)).

SEC. 4. ONGOING STUDY AND ANNUAL REPORT ON THE MEDICARE INCENTIVE PAYMENT PROGRAM.

(a) ONGOING STUDY.—The Secretary of Health and Human Services shall conduct an ongoing study on the medicare incentive payment program under section 1833(m) of the Social Security Act (42 U.S.C. 1395*l*(m)). Such study shall focus on whether such program increases the access of medicare beneficiaries who reside in an area that is designated (under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A))) as a health professional shortage area to physicians' services under the medicare program.

(b) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary of Health and Human Services shall submit to Congress a report on the study conducted under subsection (a), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

By Ms. COLLINS (for herself, Mr. CARPER, and Mr. BROWNBACK):

S. 380. A bill to amend chapter 83 of title 5, United States Code, to reform the funding of benefits under the Civil Service Retirement System for employees of the United States Postal Service, and for other purposes; to the Committee on Governmental Affairs.

Ms. COLLINS. Mr. President, today, I rise to offer to the Senate some good news for our mailers and, indeed, anyone who uses the United States Postal Service. The USPS, which has been losing significant amounts of money in recent years despite repeated increases in postage rates, has determined that its finances are in better order than previously thought. If Congress acts expeditiously on legislation that I am introducing today along with my colleague, Senator CARPER, the Postal Service will avoid an imminent rate hike.

In recent years, the United States Postal Service has been raising postal rates at a rapid pace. When the USPS last raised rates in 2002, it was the third such rate increase during an 18-month period. Such steep, irregular rate increases make it very difficult for businesses to plan for their postal costs. This is a particular problem for

catalog companies and magazine publishers, which set their prices in advance based on assumptions about postal rates. Mailing costs for some smaller catalog businesses, I am told, now can exceed production costs.

In so many ways, postage rate increases have a significant economic impact. As rates increase, so do the costs Americans bear to send letters, mail packages, and pay their bills. Rate increases also raise the cost of goods, which, of course, reflect not only the cost to ship but also the cost to advertise by mail.

But rate increases reflect the price of maintaining an ever-expanding postal network and the infrastructure to sustain it. Each year, the Postal Service adds 1.7 million new addresses. This equates to 4,800 new letter carriers making deliveries to over 513 million new delivery stops each year, all while maintaining one of the lowest first-class letter rates in the world.

In addition to providing a critical service to individual postal patrons, the Postal Service is a powerful economic engine. The USPS is the eleventh largest enterprise in the Nation with $66 billion in annual revenue, more than Microsoft, McDonald's and Coca Cola combined. While the Postal Service itself employs more than 700,000 career employees, it is also the linchpin of a $900 billion mailing industry that employs nine million Americans in fields as diverse as direct mailing, printing and paper production.

That is why the deteriorating state of the United States Postal Service's finances has been a source of great concern to many of us. After several years of large losses, the USPS has been slowly approaching its statutory borrowing limit of $15 billion.

A few months ago, however, the Office of Personnel Management discovered that the USPS will dramatically over-fund its contributions to the Civil Service Retirement Fund unless the law is changed. After having based the Postal Service's annual contributions on the assumption that it had an actuarial deficit of $32 billion, OPM discovered instead that the USPS's CSRS deficit was actually only $5 billion. The difference is primarily due to higher than expected yields on pension investments by the Department of the Treasury. If the USPS continues to fund the CSRS at its current pace, it will overfund its CSRS liability by $78 billion.

If Congress approves the changes to the payment schedule as my bill provides, the Postal Service's CSRS retirement expense would be reduced by $2.9 billion in fiscal year 2003 and another $2.8 billion in fiscal year 2004. The USPS would be able to reduce its debt by more than $3 billion in fiscal year 2003, and anticipated rate increases would be delayed until at least 2006, ushering in an era of stable and predictable postal rates.

My initial response upon hearing this good news was one of pleasant surprise but mixed, I admit, with a healthy dose of skepticism. As the old saying goes, ''if it sounds too good to be true, it probably is.'' However, the Office of Management and Budget, as well as the U.S. Treasury Department, have confirmed OPM's analysis. Further, having spoken with experts outside the government as well, I have become satisfied that this situation represents a rare exception to the rule.

That is why Senator CARPER and I today introduce the Postal Civil Service Retirement System Funding Act of 2003. Our bill will correct the statutory funding mechanism for the Civil Service Retirement System, CSRS. This legislation is necessary to prevent the overpayment of retirement contributions by the U.S. Postal Service. Most important, this bill directs OPM to determine a new amortization schedule that will pay off the Postal Service's existing unfunded CSRS liability of $5 billion.

In addition, the legislation requires that the savings resulting from this Act be used to reduce the postal debt in a manner that the Secretary of Treasury shall specify. It also expresses the sense of Congress that the Postal Service should use these savings to fulfill its commitment to hold postal rates unchanged until at least 2006, to begin to pay a portion of their massive unfunded health care liabilities, and that the savings not be used to pay bonuses to Postal Service executives.

The USPS needs other changes as well, something acknowledged by everyone inside and outside the Postal Service. I was pleased that President Bush appointed a Commission on the U.S. Postal Service that is modeled along the principles outlined in legislation I introduced last year. I am hopeful that when the Commission reports this summer, it will provide us with a blueprint to ensure that our postal system is ready to serve twenty-first century America as ably as it has served us in the past. I look forward to receiving the Commission's report and any recommendations for legislation it may include.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 380

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Postal Civil Service Retirement System Funding Reform Act of 2003''.

SEC. 2. CIVIL SERVICE RETIREMENT SYSTEM.

(a) DEFINITIONS.—Section 8331 of title 5, United States Code, is amended—

(1) in paragraph (17)—

(A) by striking ''normal cost'' the first place that term appears and inserting ''normal cost percentage''; and

(B) by inserting ''and standards (using dynamic assumptions)'' after ''practice'';

(2) by striking paragraph (18) and inserting the following:

''(18) 'Fund balance'—

''(A) means the current net assets of the Fund available for payment of benefits, as determined by the Office in accordance with appropriate accounting standards; and

''(B) shall not include any amount attributable to—

''(i) the Federal Employees' Retirement System; or

''(ii) contributions made under the Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983 by or on behalf of any individual who became subject to the Federal Employees' Retirement System;'';

(3) in paragraph (27), by striking ''and'' at the end;

(4) in paragraph (28), by striking the period and inserting ''; and''; and

(5) by adding at the end the following:

''(29) 'dynamic assumptions' means economic assumptions that are used in determining actuarial costs and liabilities of a retirement system and in anticipating the effects of long-term future—

''(A) investment yields;

''(B) increases in rates of basic pay; and

''(C) rates of price inflation.''.

(b) DEDUCTIONS, CONTRIBUTIONS, AND DEPOSITS.—Section 8334 of title 5, United States Code, is amended by striking the matter following the section heading through paragraph (1) and inserting the following:

''(a)(1)(A) The employing agency shall deduct and withhold from the basic pay of an employee, Member, congressional employee, law enforcement officer, firefighter, bankruptcy judge, judge of the United States Court of Appeals for the Armed Forces, United States magistrate judge, Court of Federal Claims judge, member of the Capitol Police, member of the Supreme Court Police, or nuclear materials courier, as the case may be, the percentage of basic pay applicable under subsection (c).

''(B)(i) Except in the case of an employee of the United States Postal Service, an equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Chief Administrative Officer of the House of Representatives, the Chief Administrative Officer may pay from the applicable accounts of the House of Representatives the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

''(ii) In the case of an employee of the United States Postal Service, an amount shall be contributed from the appropriation or fund used to pay the employee equal to the difference between—

''(I) the product of—

''(aa) the basic pay of that employee; and

''(bb) the normal cost percentage applicable to the employee category of that employee under paragraph (1)(A); and

''(II) the product of—

''(aa) the basic pay of that employee; and

''(bb) the percentage applicable to that employee under subsection (c) deducted from basic pay under paragraph (1)(A).''.

(c) CIVIL SERVICE RETIREMENT AND DISABILITY FUND.—

(1) IN GENERAL.—Section 8348 of title 5, United States Code, is amended by striking subsection (h) and inserting the following:

''(h)(1)(A) In this subsection, the term 'Postal supplemental liability' means the estimated excess, as determined by the Office of Personnel Management, of the difference between—

''(i) the actuarial present value of all future benefits payable from the Fund under this subchapter attributable to the service of

current or former employees of the United States Postal Service; and

''(ii) the sum of—

''(I) the actuarial present value of deductions to be withheld from the future basic pay of employees of the United States Postal Service currently subject to this subchapter under section 8334;

''(II) the actuarial present value of the future contributions to be made under section 8334 with respect to employees of the United States Postal Service currently subject to this subchapter;

''(III) that portion of the Fund balance, as of the date the Postal supplemental liability is determined, attributable to payments to the Fund by the United States Postal Service and employees of the United States Postal Service, including earnings on those payments; and

''(IV) any other appropriate amount, as determined by the Office in accordance with generally accepted actuarial practices and principles.

''(B)(i) In computing the actuarial present value of future benefits, the Office shall include the full value of benefits attributable to military and volunteer service for United States Postal Service employees first employed after June 30, 1971, and a prorated share of the value of benefits attributable to military and volunteer service for United States Postal Service employees first employed before July 1, 1971.

''(ii) Military service included in the computation under clause (i) shall not be included in computation of the payment required under subsection (g)(2).

''(2)(A) Not later than June 30, 2004, the Office of Personnel Management shall determine the Postal supplemental liability, as of September 30, 2003. The Office shall establish an amortization schedule, including a series of equal annual installments commencing September 30, 2004, which provides for the liquidation of such liability by September 30, 2043.

''(B) The Office shall redetermine the Postal supplemental liability as of the close of the fiscal year, for each fiscal year beginning after September 30, 2003, through the fiscal year ending September 30, 2038, and shall establish a new amortization schedule, including a series of equal annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability by September 30, 2043.

''(C) The Office shall redetermine the Postal supplemental liability as of the close of the fiscal year for each fiscal year beginning after September 30, 2038, and shall establish a new amortization schedule, including a series of equal annual installments commencing on September 30 of the subsequent fiscal year, which provides for the liquidation of such liability over 5 years.

''(D) Amortization schedules established under this paragraph shall be set in accordance with generally accepted actuarial practices and principles, with interest computed at the rate used in the most recent valuation of the Civil Service Retirement System.

''(E) The United States Postal Service shall pay the amounts determined under this paragraph for deposit in the Fund, with payments due not later than the date scheduled by the Office.

''(3) Notwithstanding any other provision of law, in computing the amount of any payment under any provision other than this subsection that is based upon the amount of the unfunded liability, such payment shall be computed disregarding that portion of the unfunded liability that the Office determines will be liquidated by payments under this subsection.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 8334 of title 5, United States Code, is amended by striking subsection (m).

(d) OTHER PAYMENTS.—

(1) IN GENERAL.—Section 7101(c) of the Omnibus Budget Reconciliation Act of 1990 (5 U.S.C. 8348 note; Public Law 101–508; 104 Stat. 1388–331) is repealed.

(2) EFFECT ON PRIOR PAYMENTS.—The repeal under paragraph (1) shall have no effect on payments made under the repealed provisions before the date of enactment of this Act.

SEC. 3. DISPOSITION OF SAVINGS ACCRUING TO THE UNITED STATES POSTAL SERVICE.

(a) IN GENERAL.—Savings accruing to the United States Postal Service as a result of the enactment of this Act shall be used to reduce the postal debt to such extent and in such manner as the Secretary of the Treasury shall specify, consistent with succeeding provisions of this section.

(b) AMOUNTS SAVED.—

(1) IN GENERAL.—The amounts representing any savings accruing to the Postal Service in any fiscal year as a result of the enactment of this Act shall be computed by the Office of Personnel Management in accordance with paragraph (2).

(2) METHODOLOGY.—Not later than July 31, 2003, for fiscal year 2003, and October 1 of the fiscal year before each fiscal year beginning after September 30, 2003, and before the date specified in paragraph (4), the Office of Personnel Management shall—

(A) formulate a plan specifically enumerating the methods by which the Office shall make its computations under paragraph (1); and

(B) submit such plan to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate.

(3) REQUIREMENTS.—Each such plan shall be formulated in consultation with the Postal Service and shall include the opportunity for the Postal Service to request reconsideration of computations under this subsection, and for the Board of Actuaries of the Civil Service Retirement System to review and make adjustments to such computations, to the same extent and in the same manner as provided under section 8423(c) of title 5, United States Code.

(4) DURATION.—Nothing in this subsection or subsection (a) shall be considered to apply with respect to any fiscal year beginning on or after October 1, 2007.

(c) REPORTING REQUIREMENT.—The Postal Service shall include in each report which is rendered under section 2402 of title 39, United States Code, and which relates to any period after the date of the enactment of this Act and before the date specified in subsection (b)(4), the amount applied toward reducing the postal debt, and the size of the postal debt before and after the application of subsection (a), during the period covered by such report.

(d) POSTAL DEBT DEFINED.—For purposes of this section, the term ''postal debt'' means the outstanding obligations of the Postal Service, as determined under chapter 20 of title 39, United States Code.

(e) SENSE OF CONGRESS.—It is the sense of the Congress that—

(1) the savings accruing to the Postal Service as a result of the enactment of this Act will be sufficient to allow the Postal Service to fulfill its commitment to hold postage rates unchanged until at least 2006;

(2) because the Postal Service still faces substantial obligations related to postretirement health benefits for its current and former employees, some portion of the savings referred to in paragraph (1) should be used to address those unfunded obligations; and

(3) none of the savings referred to in paragraph (1) should be used to pay bonuses to Postal Service executives.

(f) REPORT RELATING TO UNFUNDED HEALTHCARE COSTS.—

(1) IN GENERAL.—The United States Postal Service shall, by December 31, 2003, in consultation with the General Accounting Office, prepare and submit to the President and the Congress a report describing how the Postal Service proposes to address its obligations relating to unfunded postretirement healthcare costs of current and former postal employees.

(2) PRESIDENT'S COMMISSION.—In preparing its report under this subsection, the Postal Service should consider the report of the President's Commission on the United States Postal Service under section 5 of Executive Order 13278 (67 Fed. Reg. 76672).

(3) GAO REVIEW AND REPORT.—Not later than 30 days after the Postal Service submits its report pursuant to paragraph (1), the General Accounting Office shall prepare and submit a written evaluation of such report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate.

(g) DETERMINATION AND DISPOSITION OF SURPLUS.—

(1) IN GENERAL.—If, as of the date under paragraph (2), the Office of Personnel Management determines (after consultation with the Postmaster General) that the computation under section 8348(h)(1)(A) of title 5, United States Code, yields a negative amount (hereinafter referred to as a ''surplus'')—

(A) the Office shall inform the Postmaster General of its determination, including the size of the surplus so determined; and

(B) the Postmaster General shall submit to the Congress a report describing how the Postal Service proposes that such surplus be used, including a draft of any legislation that might be necessary.

(2) DETERMINATION DATE.—The date to be used for purposes of paragraph (1) shall be September 30, 2025, or such earlier date as, in the judgment of the Office, is the date by which all postal employees under the Civil Service Retirement System will have retired.

SEC. 4. EFFECTIVE DATE.

(a) IN GENERAL.—This Act shall take effect on the date of enactment of this Act.

(b) APPLICATION.—Section 8334(a)(1)(B)(ii) of title 5, United States Code (as added by section 2(b) of this Act), shall apply only with respect to pay periods beginning on or after the date of enactment of this Act.

Mr. CARPER. I am pleased today to be able to join my friend from Maine, the chair of the Governmental Affairs Committee, in introducing the Postal Civil Service Retirement System Funding Reform Act of 2003. This bill is of vital interest to the future of the Postal Service and enjoys the strong support of postal management, postal employees and postal customers.

According to OPM and GAO, the Postal Service will significantly overfund its obligations to its employees enrolled in the Civil Service Retirement System if it continues paying at the current rate. The Reform Act addresses this by reducing the amount of money the Postal Service is required to pay into CSRS each year to reflect a more accurate estimate of its obligations that has been prepared by OPM. In the current fiscal year, this will reduce the Postal Service's annual CSRS

payment by nearly $3 billion. These savings, and savings of similar size projected for future years, will be used to retire a portion of the Postal Service's $11.1 billion debt to Treasury. The Postal Service had previously only been able to budget $800 million for debt reduction this fiscal year.

Most importantly, the savings the Postal Service will enjoy if the Reform Act becomes law will allow it to hold the price of postage steady until at least 2006. This is important because, while what the Postal Service charges for its services is still a bargain when compared to the prices charged by most foreign posts, postal customers have absorbed multiple rate increases in recent months that have raised the price of postage by more than the rate of inflation. At a time when the economy is weak and modes of communication like e-mail and electronic bill pay are more popular than ever, another rate increase this year could be a disaster for the Postal Service. If the price of postage goes up again in 2004, as I expect it to if the Reform Act is not enacted, the Postal Service will likely lose a good deal of business. Companies will be more aggressive in encouraging their customers to communicate with them online. Large mailers will reduce volume and let workers go. Everyday users of the mail will be forced to bear another large spike in the price of a first-class stamp. All of this would come at a time when the Postal Service is predicting an increase in volume for the first time in quite a while. The Reform Act will keep mail in the system and give mailers the opportunity to increase the amount of business they do with the Postal Service.

The Reform Act, however, does not remove the Postal Service's obligation to continue on the modernization program begun under Postmaster General Jack Potter. General Potter came on the job at a difficult time for the Postal Service but has led them in a successful effort to streamline operations, taking billions of dollars in costs out of the system without hurting service. That process needs to continue.

The Reform Act also does not eliminate the need for the Postal Service to deal with the future cost of retiree health benefits. These costs are estimated at about $50 billion. The Postal Service funds them now on a pay-as-you-go basis, meaning they are not reflected in the price of postage today. If not addressed soon, these costs will be pushed on to future ratepayers, forcing the Postal Service to begin raising rates dramatically once the baby boom generation begins to retire. Some of the savings the Postal Service will enjoy if the Reform Act becomes law should be used to prevent this from happening.

Finally, the Reform Act does not remove Congress's obligation to enact postal reform legislation this year that will help the Postal Service and General Potter continue the transformation necessary to make the Postal Service viable in the electronic age. President Bush's Commission on the United States Postal Service will release a set of postal reform proposals this summer that I hope will offer some fair, balanced recommendations that we can use to begin drafting legislation. I plan to put forward a proposal of my own this year that maintains universal service and current delivery standards while giving the Postal Service the kind of flexibility its private sector competitors have to set prices and cut costs. I look forward to working with Chairman Collins and all of my colleagues on the Governmental Affairs Committee in getting a postal reform bill signed into law during the 108th Congress.

In closing, I would like to briefly address some of the similarities between the Reform Act and the Managerial Flexibility Act President Bush proposed during the 107th Congress and make an important distinction between the two proposals. Like the Managerial Flexibility Act would have done for all Federal agencies, the Reform Act makes the Postal Service responsible for benefits due to its CSRS enrollees as a result of prior military service and amortizes its unfunded CSRS obligations over a period of 40 years. The Managerial Flexibility Act also would have required Federal agencies to begin funding their retiree health benefits on a cost accrual basis, something the Postal Service should be able to do if the Reform Act becomes law and it begins to see some savings. This kind of accounting makes sense in the case of the Postal Service, which by law must be self-sufficient and must pay its employees' pension and health costs through the price of postage. The utility of requiring all Federal agencies to account for their employees' retirement costs in this way is not clear to me. As CBO points out in its January 23rd evaluation of the version of the Reform Act proposed by OPM late last year, recognizing the accrual cost of agency retirement benefits by mandating payments between agencies and the Treasury does not provide the government with the resources necessary to make future payments when they come due and does not lessen the burden on future taxpayers to pay them. In the case of the Postal Service, however, the kind of accounting contained in the Managerial Flexibility Act will give postal customers, who must plan how much they mail in future years based on how much they anticipate postage will cost, a more realistic idea of what the Postal Service's future costs of doing business will be.

If the Reform Act is not enacted before April 1st, the Postal Service will need to assume that they will be required to make the large CSRS payment required of them under current law, forcing them to file the rate case they have been preparing. This will force mailers to begin litigating the case, meaning they will begin spending resources paying lawyers instead using the mail. I call on my colleagues to act quickly on the Reform Act to prevent this from happening.

By Mr. DORGAN (for himself, Mr. CAMPBELL, Mr. BINGAMAN, Mr. INOUYE, Ms. LANDRIEU, Mr. JOHNSON, Ms. CANTWELL, Mr. WARNER, Mrs. LINCOLN, and Mr. TALENT):

S. 382. A bill to amend title XVIII of the Social Security Act to provide for coverage of cardiovascular screening tests under the medicare program; to the Committee on Finance.

Mr. DORGAN. Mr. President, I am pleased to be introducing today the Medicare Cholesterol Screening Coverage Act of 2003, along with my colleagues, Senators CAMPBELL, BINGAMAN, INOUYE, LINCOLN, LANDRIEU, WARNER, JOHNSON, CANTWELL and TALENT. Companion legislation is being introduced in the House of Representatives today by Representative DAVE CAMP and Representative WILLIAM JEFFERSON.

I think it is appropriate to be introducing this bill during ''American Heart Month.'' For the last 40 years, Congress and the President have recognized American Heart Month because of the need to continue the fight against heart disease—our country's #1 killer and a leading cause of disability. Cardiovascular diseases take an enormous human and financial toll on our Nation. Every 33 seconds, an American dies from cardiovascular disease. About 41 percent of deaths each year are from cardiovascular diseases—more than the next 6 leading causes of death combined. Adding cholesterol screening testing to the menu of preventive services already covered by Medicare is yet another step we can and should take in the fight against these insidious diseases.

Cardiovascular diseases account for one-third of all of Medicare's spending for hospitalizations. Yet the identification of one of the major, changeable risk factors for cardiovascular disease—high levels of cholesterol—is not covered by Medicare.

The National Heart, Lung, and Blood Institute and the American Heart Association recommend that all Americans over the age of 20 have their cholesterol levels tested at least once every five years. But when an American turns 65 and enters the Medicare program, their coverage for cholesterol screening stops. That is just not right.

Adding a cholesterol screening benefit to Medicare is a common-sense, cost-effective step. According to the Congressional Budget Office, this benefit would cost only $20 million a year—a small fraction of the $26 billion that Medicare spends each year for hospitalizations of patients with cardiovascular diseases.

I am pleased that language similar to my bill was included in S. 3018, bipartisan Medicare legislation introduced last fall by the leaders of the Finance

Committee, Senators GRASSLEY and BAUCUS. Unfortunately, however, the Senate did not act on this bill before adjourning last year.

I hope Congress will act soon to provide Medicare coverage of cholesterol screening, and I encourage my colleagues to cosponsor this bill.

Another way my colleagues can help in the fight against heart disease is by joining the Congressional Heart and Stroke Coalition. The Congressional Heart and Stroke Coalition was founded in 1996 and I am honored to serve as one of its co-founders and co-chairs. Since its inception, this bicameral, bipartisan Coalition has grown to nearly 200 Members.

Its purpose is to raise awareness among Congress and the public about heart attack, stroke, and other cardiovascular diseases and to support public policies to prevent, treat, and ultimately cure these diseases. I encourage those Members who have not already joined the Congressional Heart and Stroke Coalition to do so.

I look forward to working with my colleagues to add a cholesterol screening benefit for Medicare beneficiaries and to make progress in the fight against cardiovascular diseases.

I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 382

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare Cholesterol Screening Coverage Act of 2003''.

SEC. 2. COVERAGE OF CARDIOVASCULAR SCREENING TESTS.

(a) COVERAGE.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)) is amended—

(1) in subparagraph (U), by striking ''and'' at the end;

(2) in subparagraph (V)(iii), by inserting ''and'' at the end; and

(3) by adding at the end the following new subparagraph:

''(W) cardiovascular screening tests (as defined in subsection (ww)(1));''.

(b) SERVICES DESCRIBED.—Section 1861 of the Social Security Act (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Cardiovascular Screening Tests

''(ww)(1) The term 'cardiovascular screening tests' means the following diagnostic tests for the early detection of cardiovascular disease:

''(A) Tests for the determination of cholesterol levels.

''(B) Tests for the determination of lipid levels of the blood.

''(C) Such other tests for cardiovascular disease as the Secretary may approve.

''(2)(A) Subject to subparagraph (B), the Secretary shall establish standards, in consultation with appropriate organizations, regarding the frequency and type of cardiovascular screening tests.

''(B) With respect to the frequency of cardiovascular screening tests approved by the Secretary under subparagraph (A), in no case may the frequency of such tests be more often than once every 2 years.''.

(c) FREQUENCY.—Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y(a)(1)) is amended—

(1) by striking ''and'' at the end of subparagraph (H);

(2) by striking the semicolon at the end of subparagraph (I) and inserting '', and''; and

(3) by adding at the end the following new subparagraph:

''(J) in the case of a cardiovascular screening test (as defined in section 1861(ww)(1)), which is performed more frequently than is covered under section 1861(ww)(2).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to tests furnished on or after January 1, 2004.

By Ms. STABENOW.

S. 383. A bill to amend the Solid Waste Disposal Act to prohibit the importation of Canadian municipal solid waste without State consent; to the Commitment on Environment and Public Works.

Ms. STABENOW. Mr. President, I rise today to introduce a bill to address the growing problem of Canadian waste shipments to Michigan.

In 2001, Michigan imported almost 3.6 million tons of municipal solid waste, more than double the amount that was imported in 1999. This gives Michigan the unduly distinction of being the third largest dumping ground of waste in the United States.

My colleagues may be surprised to know that the biggest source of this waste was not another State, but our neighbor to north, Canada. More than half the waste that was shipped to Michigan in 2001 was from Ontario, Canada, and these imports are growing rapidly. On January 1, 2003, as another Ontario landfill closed its doors, the City of Toronto switched from shipping two-thirds of its trash, to shipping all of its trash—1.1 million tons—to a Michigan landfill. And this deal could last 20 years! Experts predict that soon there will be virtually no local disposal capacity in Ontario, which could mean even more waste being shipped across the border to Michigan.

Not only does this waste dramatically decrease Michigan's own landfill capacity, but it has a tremendous negative impact on Michigan's environment and the public health of citizens. Currently, Canadian municipal solid waste is sent to landfills in seven different Michigan counties—Genesee, Huron, Macomb, Monroe, Oakland, Washtenaw, and Wayne counties. Based on current usage statistics, the Michigan Department of Environmental Quality, DEQ, estimates that Michigan has capacity for 15–17 years of disposal in landfills. However, with the proposed dramatic increase in importation of waste, this capacity is less than 10 years. The Michigan DEQ estimates that for every five years of disposal of Canadian waste at the current usage volume, Michigan is losing a full year of landfill capacity. The Canadian waste also hampers the effectiveness of Michigan's State and local recycling efforts, since Ontario does not have a bottle law requiring recycling.

These Canadian waste shipments also present a threat to homeland security. Currently, 130 truckloads of waste come into Michigan each day from Canada. These trucks cross the Ambassador Bridge and Blue Water Bridge and travel through the busiest parts of Metro Detroit. In addition to causing traffic delays, and filling our air with the stench of exhaust and garbage, these trucks also present a security risk at our Michigan-Canadian border, since by their nature trucks full of garbage are harder for Customs agent to inspects then traditional cargo.

Last year, I joined with Senator LEVIN and Congressman DINGELL to introduce legislation to enforce the protections that Michigan is already entitled to which are contained in an international agreement between the United States and Canada. I continue to be supportive of this bill and I was proud to join as an original co-sponsor when it was reintroduced last month. However, with the recent landfill closings in Ontario, this problem has spiraled out of control.

That is why today I am introducing ''the Canadian Waste Import Ban Act of 2003.'' This bill would stop these shipments by placing an immediate federal ban on the importation of Canadian municipal solid waste. The ban will be in place until the EPA enforces ''the Agreement Concerning the Transboundary Movement of Hazardous Waste.'' Under this existing agreement, the EPA is supposed to receive notification of Canadian waste shipments, and then would have 30 days to consent or object to the shipment. Not only have these notification provisions not been enforced, but the EPA has indicated that they would not object to the municipal waste shipments.

In addition, the bill requires the EPA to Michigan's or any State's consent before receiving any shipment of Canadian municipal solid waste. In enforcing the agreement, the EPA must obtain the consent of the receiving State, before consenting to a Canadian municipal solid waste shipment. The EPA must also consider the impact of the shipment on homeland security, the environment, and public health.

This legislation will stop the importation of Canadian trash until Michigan residents are given the voice they deserve in deciding whether or not this waste should be sent to their landfills. We need to give the states a real voice in these decisions and my bill guarantees that the states through the EPA will get to decide whether or not they want to receive this Canadian waste. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 383

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Canadian Waste Import Ban Act of 2003''.

SEC. 2. CANADIAN MUNICIPAL SOLID WASTE.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following:

''SEC. 4011. CANADIAN MUNICIPAL SOLID WASTE.

''(a) DEFINITIONS.—In this section:

''(1) AGREEMENT.—The term 'Agreement' means—

''(A) the Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada, signed at Ottawa on October 28, 1986 (TIAS 11099) and amended on November 25, 1992; and

''(B) any regulations promulgated to implement and enforce that Agreement.

''(2) CANADIAN MUNICIPAL SOLID WASTE.—The term 'Canadian municipal solid waste' means municipal solid waste that is generated in Canada.

''(3) MUNICIPAL SOLID WASTE.—

''(A) IN GENERAL.—The term 'municipal solid waste' means—

''(i) material discarded for disposal by—

''(I) households (including single and multifamily residences); and

''(II) public lodgings such as hotels and motels; and

''(ii) material discarded for disposal that was generated by commercial, institutional, and industrial sources, to the extent that the material—

''(I)(aa) is essentially the same as material described in clause (i); or

''(bb) is collected and disposed of with material described in clause (i) as part of a normal municipal solid waste collection service; and

''(II) is not subject to regulation under subtitle C.

''(B) INCLUSIONS.—The term 'municipal solid waste' includes—

''(i) appliances;

''(ii) clothing;

''(iii) consumer product packaging;

''(iv) cosmetics;

''(v) debris resulting from construction, remodeling, repair, or demolition of a structure;

''(vi) disposable diapers;

''(vii) food containers made of glass or metal;

''(viii) food waste;

''(ix) household hazardous waste;

''(x) office supplies;

''(xi) paper; and

''(xii) yard waste.

''(C) EXCLUSIONS.—The term 'municipal solid waste' does not include—

''(i) solid waste identified or listed as a hazardous waste under section 3001, except for household hazardous waste;

''(ii) solid waste, including contaminated soil and debris, resulting from—

''(I) a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604, 9606);

''(II) a response action taken under a State law with authorities comparable to the authorities contained in either of those sections; or

''(III) a corrective action taken under this Act;

''(iii) recyclable material—

''(I) that has been separated, at the source of the material, from waste destined for disposal; or

''(II) that has been managed separately from waste destined for disposal, including scrap rubber to be used as a fuel source;

''(iv) a material or product returned from a dispenser or distributor to the manufacturer or an agent of the manufacturer for credit, evaluation, and possible potential reuse;

''(v) solid waste that is—

''(I) generated by an industrial facility; and

''(II) transported for the purpose of treatment, storage, or disposal to a facility (which facility is in compliance with applicable State and local land use and zoning laws and regulations) or facility unit—

''(aa) that is owned or operated by the generator of the waste;

''(bb) that is located on property owned by the generator of the waste or a company with which the generator is affiliated; or

''(cc) the capacity of which is contractually dedicated exclusively to a specific generator;

''(vi) medical waste that is segregated from or not mixed with solid waste;

''(vii) sewage sludge or residuals from a sewage treatment plant;

''(viii) combustion ash generated by a resource recovery facility or municipal incinerator; or

''(ix) waste from a manufacturing or processing (including pollution control) operation that is not essentially the same as waste normally generated by households.

''(b) BAN ON CANADIAN MUNICIPAL SOLID WASTE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), until the date on which the Administrator promulgates regulations to implement and enforce the Agreement (including notice and consent provisions of the Agreement), no person may import into any State, and no solid waste management facility may accept, Canadian municipal solid waste for the purpose of disposal or incineration of the Canadian municipal solid waste.

''(2) ELECTION BY GOVERNOR.—The Governor of a State may elect to opt out of the ban under paragraph (1), and consent to the importation and acceptance by the State of Canadian municipal solid waste before the date specified in that paragraph, if the Governor submits to the Administrator a notice of that election by the Governor.

''(c) AUTHORITY OF ADMINISTRATOR.—

''(1) IN GENERAL.—Beginning immediately after the date of enactment of this section, the Administrator shall—

''(A) perform the functions of the Designated Authority of the United States described in the Agreement with respect to the importation and exportation of municipal solid waste under the Agreement; and

''(B) implement and enforce the Agreement (including notice and consent provisions of the Agreement).

''(2) CONSENT TO IMPORTATION.—In considering whether to consent to the importation of Canadian municipal solid waste under article 3(c) of the Agreement, the Administrator shall—

''(A) obtain the consent of each State into which the Canadian municipal solid waste is to be imported; and

''(B) consider the impact of the importation on homeland security, public health, and the environment.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding after the item relating to section 4010 the following:

''Sec. 4011. Canadian municipal solid waste.''.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 55—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON SMALL BUSINESS AND ENTREPRENEURSHIP

Ms. SNOWE (for herself and Mr. KERRY) submitted the following resolution; which was referred to the Committee on Small Business and Entrepreneurship:

S. RES. 55

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with jurisdiction under rules XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Small Business and Entrepreneurship is authorized from March 1, 2003, through September 30, 2003, and October 1, 2003 through September 30, 2004, and October 1, 2004 through February 28, 2005, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department of agency.

SEC. 2. (a) The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this resolution shall not exceed $1,215,913, of which amount (1) not to exceed $10,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $10,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(i) of the Legislative Reorganization Act of 1946).

(b) For the period of October 1, 2003, through September 30, 2004, expenses of the committee under this resolution shall not exceed $2,139,332, of which amount (1) not to exceed $10,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 292(i) of the Legislative Reorganization Act of 1946, as amended) and (2) not to exceed $10,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period of October 1, 2004 through February 28, 2005, expenses of the committee under this resolution shall not exceed $911,668, of which amount (1) not to exceed $10,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $10,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The committee may report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, not later than February 28, 2003.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationary supplies purchased through the Keeper of the Stationary, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the

Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording Photographic Services, or (7) for payment of franked mail cost by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 2003, through September 30, 2003, and October 1, 2003, through September 30, 2004, and October 1, 2004, through February 28, 2005, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations''.

SENATE RESOLUTION 56—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON THE BUDGET

Mr. NICKLES submitted the following resolution; from the Committee on the Budget; which was referred to the Committee on Rules and Administration:

S. RES. 56

Resolved, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such Rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on the Budget is authorized from March 1, 2003, through September 30, 2003; October 1, 2003, through September 30, 2004; and October 1, 2004, through February 28, 2005, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or nonreimbursable basis the services of personnel of any such department or agency.

SEC. 2. (a) The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this resolution shall not exceed $3,136,108, of which amount (1) not to exceed $40,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946), and (2) not to exceed $4,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period October 1, 2003, through September 30, 2004, expenses of the committee under this resolution shall not exceed $5,522,410, of which amount (1) not to exceed $40,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946), and (2) not to exceed $4,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period October 1, 2004, through February 28, 2005, expenses of the committee under this resolution shall not exceed $2,355,010, of which amount (1) not to exceed $40,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946), and (2) not to exceed $4,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2005, respectively.

SEC. 4. Expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required (1) for the disbursement of salaries of employees paid at an annual rate, or (2) for the payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment of stationery supplies purchased through the Keeper of the Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 2003, through September 30, 2003; October 1, 2003 through September 30, 2004; and October 1, 2004, through February 28, 2005, to be paid from the Appropriations account for ''Expenses of Inquiries and Investigations.''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, February 12, 2003, at 9:30 a.m., in open and closed session to receive testimony on current and future worldwide threats to the National Security of the United States.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and transportation and the House Subcommittee on Science and Space be authorized to meet on Wednesday, February 12, 2003, at 9:30 a.m. on the *Challenger* Space Shuttle in Russell SR–325.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, February 12, 2003 at 9:30 a.m. to conduct a business meeting regarding S. 195, Underground Storage Tank Compliance Act of 2003; Several Committee Resolutions on GSA Prospectuses; and Committee Funding Resolution.

The meeting will be held in SD 406.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FINANCE

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, February 12, 2003, at 9:30 a.m., to hear testimony on Examination of Proposals for Economic Growth and Job Creation: Incentives for Investment.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, February 12, 2003 at 9:30 a.m. to hold a Hearing on The Reconstruction of Afghanistan: An Update.

AGENDA

Witnesses: Panel 1: The Hon. David T. Johnson, Coordinator for Afghanistan Assistance, Department of State, Washington, DC.

The Hon. Dr. Peter W. Rodman, Assistant Secretary of Defense for International Security Affairs, Department of Defense, Washington, DC.

Panel 2: The Hon. Ishaq Shahryar, Ambassador of Afghanistan to the United States, Washington, DC.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in Executive Session during the session of the Senate on Wednesday, February 12, 2003.

The following agenda will be considered:

AGENDA

Adopting sub-committee memberships
Adopting committee rules
S.____, Keeping Children and Families Safe Act of 2003 (CAPTA reauthorization)
S.____, NIH Foundation
S. 239, Trauma Care
S.____, Birth Defects
S.____, Animal Drug User Fee Act

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON INDIAN AFFAIRS

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, February 12, 2003, at 10:30 a.m. in Room 485 of the Russell Senate Office Building to conduct a CONFIRMATION HEARING on the President's nomination of Mr. Ross O. Swimmer to be Special Trustee for American Indians at the U.S. Department of the Interior.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. KYL. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a Judicial Nominations hearing on Wednesday, February 12, 2003 in Dirksen Room 226 at 9:30 a.m.

TENTATIVE AGENDA

PANEL I

The Honorable Richard C. Shelby United States Senator (R–AL); The Honorable Jeff Sessions United States Senator (R–AL); The

Honorable Ben Nighthorse Campbell United States Senator (R–CO); The Honorable Wayne Allard United States Senator (R–CO); The Honorable George F. Allen United States Senator (R–VA); The Honorable Lamar Alexander United States Senator (R–TN); and The Honorable Chris Cannon United States Representative (R–UT).

PANEL II

Timothy M. Tymkovich to be United Circuit Judge for the Tenth Circuit

PANEL III

J. Daniel Breen to be U.S. District Judge for the Western District of Tennessee; William H. Steele to be U.S. District Judge for the Southern District of Alabama; Thomas A. Varlan to be U.S. District Judge for the Eastern District of Tennessee; Timothy C. Stanceu to be a Judge of the U.S. Court of International Trade; and Marian Blank Horn to be a Judge of the U.S. Court of Federal Claims.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUBCOMMITTEE ON OCEANS, ATMOSPHERE, AND FISHERIES

Mr. President, I ask unanimous consent that the Subcommittee on Oceans, Atmosphere, and Fisheries be authorized to meet on Thursday, February 12, 2003, at 2:30 pm on the Coast Guard transition to Homeland Security.

THE PRESIDING OFFICER. Without objection, it is so ordered.

PRIVILEGE OF THE FLOOR

Mrs. CLINTON. I ask unanimous consent that Robyn Rimmer, a legal fellow in my office, be granted the privilege of the floor for this debate.

The PRESIDING OFFICER. Without objection, it is so ordered.